United States Court of Appeals for the Second Circuit



APPENDIX

75-4227

United States Court of Appeals

FOR THE SECOND CIRCUIT

Estate of Edwin C. Weiskopf, Deceased, Anne K. Weiskopf and Solomon Litt, Executors, and Anne K. Weiskopf, Surviving Wife,

Appellants,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

EDWIN C. WHITEHEAD and JOSEPHINE WHITEHEAD,

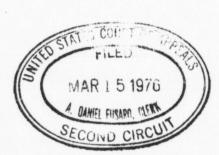
Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

APPENDIX



Paul, Weiss, Rifkind, Wharton & Garrison 345 Park Avenue New York, New York 10022

ROBERTS & HOLLAND
1301 Avenue of the Americas
New York, New York 10019

Attorneys for Appellants



PAGINATION AS IN ORIGINAL COPY

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	Direct								A149
***	Cross								A180
	Redirect			• .					A201

^{*}Portions of the transcript marked with an asterisk reflect corrections made in the transcript pursuant to Orders of the Tax Court granting Motions to Correct the Transcript, dated October 31, 1973 and February 1, 1974.

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TAX COURT OF THE UNITED STATES GENERAL DOCKET

			DOCKET NO.	1920-69			
TATE OF FINIT	N C. WEISKOPF, Deceased,			ASS			
NE K. WEISKOPF and SOLOMON LITT, Executors, d ANNE K. WEISKOPF, Surviving Wife		James B. Lewis and Alfred D. Youngwood (Paul, Weinhame Colivers, Rifkind, Wharton & Garrison), 345 Park Avenue, New York, New York 10000, 10036					
w York, New	York PETITIONER,	ADDRESS Anlene Harris, 6/13/73)	(Same as Al	bove)(E/A			
MISSIONER OF	INTERNAL REVENUE, RESPONDENT.						
Date onth Day Year	Filings and Proceed	lings	Action	Served			

Date	Filings and Proceedings	on	20	rved	
Month Day Year					
pr. 28, 1969	PETITION FILED: FEE PAID Apr. 28, 1969 GRANTE	n	Apr. 2	9, 1	969
	PETRS'. REQUEST for Trial at New York, N. Y., filed. Apr. 28,	1	Apr. 2	9, 1	959
	AMENDED Petition filed by petitioner		June 1	7, 19	269
	ANSWER TO PETITION, AS AMENDED filed by respondent.		JUL	::::	69
	NOTICE OF TRIAL on June 12, 1972 at New York, N.Y.		Mar.	9, 19	72
	MORION by Pasp to consolidate 1920-69 & 1934-69 for	1177			
	trial, briefing and opinion. GRANT June 1,		June :	1,197	2_
y 12, 1972	NOTICE of filing of Motion to consolidate and calendaring				
	thereof for hearing on June 12, 1972, at New York, N.Y.				
	(If Objections filed by Petr. on or before May 26, 1972)		May 1	2, 19	972
June 1, 1972	MOTION by Resp. for leave to file Amendment to Answer				
	filed. (Amendment to Answer Lodged)				
June 6, 1972	OFDER, that counsel for petrs. shall have until June 29		June	7, 19	272
	1972, in which to file objections to Resp's notion to		-		
	file amendment to answer. In event objections are			,	
	received on or before June 29, 1972, aforesaid motion				
	is calendared for hearing at the Motions Session on		-		
	July 12, 1972, at Washington, D.C.		F	orm No	. 34
				March 1	· ·

TAX COURT OF THE UNITED STATES GENERAL DOCKET

CKET NO. 1920-69

(Continuation)

SOME OF FORT	IN C. WEISKOPE, DECEASED, EPC.	PETITIONER	PAGE 2
Date South Day Year	Filings and Proceedings	Action	. Served
	MOTION by Petr. for continuance from June 12, 1972,		
,†	New York, N.Y., to the trial calendar Oct. 10, 1972.	(See Order June 7,1972	
	(No obj by Pesp. if continued to Nov. 13, 1972 calendar		
une 7, 1972	OFDER, that motion for continuance is granted in that		
	this case is stricken from the trial session at New		
	York, N.Y., on June 12, 1972, and further		
	ORDERFD, that this case is calendared for trial on		
	Nov. 13, 1972, at New York, N.Y.		June 7, 1972
Tuly 7, 1972	ORDERED that respondent's motion is granted and		July 11,1972
	Amendment to Answer lodged June 1, 1972 is filed this		oury ==, >.
	date and case is stricken from the calendar for the		
	Motions Session Wash. D.C. July 12, 1972. Judge Drenner	n	July 11, 1977
ıly 7, 1972	AMENDMENT to Answer filed		
ov.9, 1972	MOTION by Petr. for continuance from Nov. 13,	, GRANTED Nov.10,1972	2 12 107
	1972, New 101k, N.1.	tid Generall;	
Mar. 20, 197	3 NOTICE OF TRIAL on June 18, 1973 at New York, N.Y.		JUN 1 5 1973
June 13,197	73 ENTRY OF APPEARANCE by Arlene Harris for Pet	r.	3011 2 0
	filed.		
June 21, 1973	3 TRIAL at New York, N. Y. before Judge Wiles.		
	(Briefs are due from both Petrs. Counsel).		
y	Stipulation of Facts filed with Jt. Exh. attached.		
	Oral Stipulation as to Jt. Exh. 39-LL,40-MM & h2-NN	1.	
	ORIGINAL BRIEFS DUE - September 19, 1973		
	REPLY BRIEFS DUE - November 19, 1973		
	881-548		

TAX COURT OF THE UNITED STATES GENERAL DOCKET

OCKET NO. 1 9 2 0 - 6 9

(Continuation)

STATE OF EDVI	N C. WEISKOPF, DEC'D., ETC.	PETITIONER	PAGE 3
Date Month Day Year	Filings and Proceedings	Action	Served
	SUBMITTED TO JUDGE WILES		
uly 10, 1973	TRANSCRIPT of June 21, 1973 rec'd.		
Sept. 7, 1973	MOTION by Petr. for extension of time to Nov. 5, 1973	GRANTED Sept. 7, 1973	SEP 1 0 1973
	within which to file Briefs.		
Oct. 29, 1973	MOTION by Petr. to correct transcript. (No Obj. Resp.)		110V 1 1973
iov. 1, 1973	MCTICN by Petr. for further extension of time to	GRANTED Nov. 2, 1973	NOY 2 1973
	Nov. 19, 1973 to file brief.		
v. 16,1973	BRIEF for Petr. filed.(22 P. Copies)		NOY 2 0 1973
ov.19,1973	BRIEF for Resp. filed.		NOV 2 0 1973
Jan. 8, 1974	MOTION by Petr. for leave to file in lieu of an		
	Answering Brief, a Reply Brief to Resp's Answering		
	Brief. (No Obj. Parties)	GRANTED Jan. 9, 1974	JAN 9 127
an. 15, 1974	MOTION by Petr. in Dkt. #1934-69 for Extension of time		
	to February 18, 1974 within which to file Answering		
	Brief.	GRANTED Jan. 15, 1974	JAN 1 6 1974
Jan. 16, 1974	MOTION by Petitioners to Correct Transcript.	GRANTED Feb. 1, 1974	Feb. 4, 1974
Jan 18, 1974	NOTICE that Respondent is directed to file on or befor	e	JAN 18 127-
	Feb. 4, 1974 a notice of objection or no objection		
	to Petitioner's Motion filed Jan 16, 1974.		
Jan. 30,1974	OBJECTION by Resp to Petr motion filed Jan. 16,	1974	FEB 4 1974
'eb. 19, 1974	REPLY BRIEF for Respondent filed.		FEB 20 197
lar.20,1974	REPLY BRIEF for Petr. (Serve per Judge) Serve (12 Transcal 7/24/74)	To DET. P.	JUL 29 1374
pr.17,1975 B	TINDINGS OF FACT AND OPINION filed, Judge Wiles.		APR 1 8 1975
	(Decision will be entered under Rule 155.)		
	(Continued on page 4)		GPO: 1973 O - 493-575

(Cate of EDWEL G. VETSKOPP Transport)

004A GENERAL DOCKET

XKET NO. 1920-60

(Construction)

	(Continuation)		
	EDWIN C. WEISKOPF, DECEASED, ETC.	PETITIONER	PAGE 4
Sonth Day Year	Filings and Proceedings	Action	Served
ulv 15, 1975	AGREED COMPUTATION filed.		
uly 17, 1975			July 17,197
	APPELLATE PROCEEDINGS		
t. 6, 1975	MOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		Oct. 7, 1975
t. 7, 1975	MOTICE of Filing with copy of notice of appeal sent to		
	Chief Counsel, Mr. Meade Whitaker.		Oct. 7, 1975
t. 7, 1975	NOTICE, to parties, of assembling and date for trans-		
-	mission of record.		Oct. 7, 1975
-			
	-		
		·	
		i	

Form No. 34 A March 1957

TAX COURT OF THE UNITED STATES OCSA GENERAL DOCKET

DOCKET NO. 1934-69

			CLASS
IN C. WHITEHEAD and JOSEPHINE WHITEHEAD	APPEARANCES FOR PETIT	IONER:	
2 Forest Avenue 2. New York 10580 PETITIONER.	Mark H. Johnson (Robs NAME of Americas, New Laurence Coldfein, Ro ADDMESS Of Americas, New	York, New York berts & Hollan York, N. Y.,	k 10019. d, 1301 Avenue 10019(5/9/72)
	Richard A. Levine(Rob	erts & Holland) 1301 1707110
VS.	of Americas, N.Y., N.Y	10019(5/12/	72)
ISSIONER OF INTERNAL REVENUE, RESPONDENT.			
Date	1	1	
th Day Year Filings and Proceeds	ngs	Action	Served
1 28, 1959 PETITION FILED: FEE PAID May 4	, 1969.		May 4, 1969
il 28, 1969 REQUEST by petitiones for trial a	at New York N Y	GRANTED	
	2018, N. 1.	May 4,1969	May 4, 1969
+, 1969 Filing fee received			
e 17, 1969 AMENDED PETITION filed by Petrs.			June 19, 1959
y 14, 1969 ANSWER TO PETITION, AS AMENDED i	riled by respondent		
			JUL : 5 1989
r. 9, 1972 NOTICE OF TRIAL on June 12, 1972	at New York, N.Y.		Mar. 9, 1972
il 25, 1972 APPLICATION for Order to take De	position upon emitton	DENIED	
		by Order	
interrogatories of Bermard Fra	nklin at London SW1.	May 15, 1972	
England filed by Petitioners.			
1 25, 1972 WRITTEN INTERROGATORIES to be pro	prounded on behalf of		
Petitioners filed.			Apr. 25, 1972
11 25, 1972 NOTICE OF APPLICATION to take Der	cosition upon written		April 25, 1972
interrogatories to Respondent.	(Cojections and/or		
cross-interrogatories due on or	before May 5, 1972).		
3, 1972 NOTICE OF OPJECTION by Resp. to 1	Petra. Application		May 10, 1972
filed April 25, 1972.			
), 1972 FMFY OF APPEAPANCE by Laurence (bldfain for patrs.fils	d.	May 10, 1972
(Continued to Pas	ze 2)		!
The state of the s			Form No. 34

TAX COURT OF THE UNITED STATES OCEA

GENERAL DOCKET

JKET NO.	(Continuation)		
- Allert - Control - Contr	HEAD AND JOSEPHINE WHITEHEAD	PETITIONER	PAGE 2
Onth Day Year	Fillings and Proceedings	Action	Served
7 10, 1972	NOTICE of Hearing on Petrs. Application to take Depo-		May 10, 1972
	sition on written interrogatories and Resp. Cojection	ns	
	thereto on May 15, 1972 at New York, New York.		
10, 1972	MOTION by Resp. to consolidate 1920-69 & 1934-69 for		
	trial, briefing and opinion.	GRANTED June 1, 1972	Jun.1, 1972
y 12, 1972	MOTICE of filing of Motion to consolidate and calendarin	1	
	thereof for hearing on Jum. 12, 1972, at New York, N.Y.	1	
	(If Objections filed by Petr. on or before May 26, 19	72)	May 12, 1972
יy 12, 1972	ENTRY OF APPEARANCE by Richard A. Levine as Counsel		
	for petr. filed.		May 16,1972
, 15, 1972	HRG. at New York, N.Y. before Judge Forrester		
	Hrg. on application for order to take deposition of		
	Bernard Franklin - Denied.		
35, 1972	ORDERED that petitioners' Application for order to take	е	
	deposition of Bernard Franklin London England on		Jun. 1, 1972
	written interrogatories is hereby denied.		
- 26, 1972	TRANSCRIPT of May 15, 1972 rec'd.		
1972	MOTION by Resp. for leave to file Amendment to Answer		
	filed. (Amendment to Answer Lodged)		
ne 6, 1972	OPDER, that counsel for petrs. shall have until June 29		Jun. 7,1972
	1972, in which to Tile objections to Pasp's motion to		
	file arendment to enswer. In event objections are		
	rec'd. on or before June 29, 1972, aforesaid motion is		
	at Washington, D.C. us converse ora 199 o-1911	2, 1972,	
	(Continued on page 3) 851-548		

TAX COURT OF THE UNITED STATES 007A GENERAL DOCKET

	TOGERATUR LETERARD .	PETITIONES	DICE 2
Date	JOSEPHINE WHITEHEAD	PETITIONER	PAGE 3
Month Day Year	Filings and Proceedings	Action	Served
une 6, 1972	MOTION by Petr. for continuance from June 12, 1972,		
	New York, N.Y. to the trial calendar Oct. 10, 1972.	THE RESERVE AND DESCRIPTION OF THE PERSON OF	
	(No Obj by Peso. if continued to Nov. 13,1972 calenda	June 7, 1972)	
172 7, 1972	noner, that notion for continuence is granted in that		
	this case is stricken from the trial session at New		
	York, N.Y. on June 12, 1972, and further		
	(277227), that this case is calendared for trial on		
	Nov. 13, 1972, at New York, N.Y.		June 7, 19
July 7, 1972	CREERED that respondent's motion is granted and		
	Amendment to Answer is stricken from the calendar for		
	the Motions Session Wash. D.C. July 12, 1972 Judge		July 11, 19
	Drennen. · ·		
July 7, 1972	AMENDMENT to Answer filed		July 11, 19
v. 9, 1972	MOTION by Petr. for continuance from Nov. 13,	GRANTED	
	1972, New York, N.Y. (Cont	Nov.10, 197	Nov.13,19
ar. 20,1973	NOTICE OF TRIAL on June 18, 1973 at New York, N.Y.		Mar. 20, 1
une 21, 1973	TRIAL at New York, N. Y. before Judge Wiles.		.
	(Briefs are due from both Petrs. Counsel).	<u> </u>	
	Stimulation of Facts filed with Jt. Exh. attached.	<u> </u>	i
	Oral Stipulation as to Jt. Exh. 39-LL,40-MY & 42-MI.	<u> </u>	
	ORIGINAL BRIEFS DUE - September 19, 1973	:	!
	PEPLY BRIEFS DUE - November 19, 1973		!
	SUBSTITED TO JUDGE WILES		
July 10, 19	73 TRANSCRIPT of June 21, 1973 rec'd.		
			GP 0 854-9:7

GP 0 884-9 17

Form No. 34 A

TAX COURT OF THE UNITED STATES 008A GENERAL DOCKET

KET NO. 19	31:-69
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:KET NO. 193	(Coleman)		
WEN C. AND JO	DSEPHINE WHITEHEAD	PETITIONER	PAGE L
Date Day Year	Filings and Proceedings (JUDGE WILES)	Action	Served
pt. 7, 1973	MOTION by Petr. for extension of time to Nov. 5, 1973	GRANTED Sept. 7, 1973	SEP 1 0 157.
	within which to file Briefs.		
t. 29, 1973	MOTION by Petr. to correct transcript. (No Coj. Resp.)		NOV 1 1973
7. 1, 1973	MOTICA by Petr. for further extension of time to	GRANTED Nov. 2, 1973	NOV 2 1573
	Nov. 19, 1973 to file brief.		
v. 19. 1973	BRIEF for Petitioners filed.		NOV 1 1 18/3
1.19,1973	BRIEF for Resp. filed.		MCA.5 - 1654
n. 8, 1974	MOTION Ly Petr. in Dkt. #1920-69 for leave to file in		
	lieu of an Answering Brief, a Reply Brief to Resp's		
	Answering Brief. (No Obj. Parties)	GRANTED Jan. 9, 1974	JAN 9 1973
1. 15, 1974	MOTION by Petr. for extension of time to February 18,		
	197h within which to file Answering Brief.	Jan. 15, 1974	July 1.3 196
4, 16, 1974	MOTION by Petitioners to Correct Transcript.	GRANTED Feb. 1, 1974	Feb.4, 1974
in 18, 1974	NOTICE that Respondent is directed to file on or		JAN 18 1974
	before Feb. 4, 1974 a notice of objection or no		
	objection to Petitioner's Motion filed Jan 16, 1971	•	
n.30,1974	OBJECTION by Resp to Petr motion filed Jan. 16,		FEB 4 1974
	1974.	,	
Feb. 19, 197	REPLY BRIEF for Petr. filed.	22.6 . 77	TEP 0 0 197
	REPLY BRIEF for Respondent filed.	1	FEB 57 197
pr.17,1975	FINDINGS OF FACT AND OPINION Siled, Judge		APR 18 1973
	Wiles. (Decision will be entered under Rule		:
	155.)		!
ily 15, 1975	ASPEED COMPUTATION Filed.	1	

UNITED STATES TAX COURT : 009A

GENERAL DOCKET

KET NO. 1934-69

(Continuation)

	(Continuation)		
WEI C. AND	JOSEPHINE WHITEHEAD	PETITIONER	PAGE 5
Ditte nth Day Year	Filings and Proceedings	Action	Served
y 17, 1975	DECISION ENTERED, Judge Wiles.		July 17,1975
	APPELLATE PROCESTINGS		
. 6. 1975	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		Det. 7, 1975
. 7, 1975	NOTICE of Filing with copy of notice of appeal sent to		
	Chief Counsel, Mr. Meade Whitaker.		Oct. 7, 1975
. 7, 1975	MOTICE, to parties, of assembling and date for trans-		
	mission of record.		Oct. 7, 1975
	•		
			-

TAX COURT OF THE UNITED STATES

Estate of EDWIN C. WEISKOPF, Deceased,
ANNE K. WEISKOPF and SOLOMON LITT,
Executors, and ANNE K. WEISKOPF,
Surviving Wife,

Petitioners.

v.

Docket No. 1920-69

COMMISSIONER OF INTERNAL REVENUE.

Respondent.

AMENDED PETITION

The above-named patitioners heroby patition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (correspondence symbols AU:R:90D) dated January 29, 1969, and as the basis of their case allege as follows:

1. The petitioners are (i) the duly qualified and acting Executors of the Estate of Edwin C. Weiskopf (the "decedent"), having been appointed as such by the Surrogate's Court of New York County on March 29, 1968, and (ii) the decedent's surviving wife. The petitioners reside in New York, New York. The Federal income tax return of the decedent and his wife for the calendar year 1966, the period here involved, was filed with the District Director of Internal Revenue for

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the Manhattan District. The decedent died a resident of New York, New York on February 7, 1968.

- 2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioners on January 29, 1969.
- 3. The Commissioner has determined a deficiency in income tax for the calendar year 1966 in the amount of \$481,465.57, of which at least \$477,865.57 is in dispute.
- 4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:
- (a) Disallowance of deduction of \$57,846.75 of the decedent's distributive share of charitable contributions made by Benhack Realty Associates, a partnership.
- (b) Disallowance of deduction of \$200 of the decedent's distributive share of loss of the said partnership.
- (c) Inclusion in gross income as a dividend under section 1248(a) of the Internal Revenue Code of all or any part of the \$1,104,923.61 profit allegedly realized by the decedent upon sale of stock of Intapco, Inc. and, alternatively, improper computation of the limitation under section 1248(b) of said Code on tax attributable to such inclusion.
- 5. The facts, on information and belief, upon which the petitioners rely as the basis of this case are as follows:

- (a) The decedent had a 50 percent distributive share of income, gains, losses, deductions and credits of Eenhack Realty Associates, a calendar year partnership, for the calendar year 1966.
- (b) During 1966 Benhack Realty Associates contributed property having a fair market value of \$172,393.50 to Organizations described in section 170(c) of the Internal Revenue Code.
- (c) On September 1, 1966, Benhack Realty Associates purchased a building which it immediately commenced using in its trade or business. The cost of the building was \$75,000, its useful life was 25 years, and Benhack Realty Associates elected to depreciate it under the 150 percent declining balance method.
- (d) The decedent owned four hundred ninety shares of the preferred stock of Intapco, Inc., a corporation organized under the laws of the State of New York ("Intapco"), and no shares of any other class of stock of Intapco, from the original issuance of stock of Intapco to February 21, 1966. On February 21, 1966 the decedent acquired fifty shares of the common stock of Intapco from Intapco in exchange for fifty shares of the preferred stock of Intapco. The decedent sold all of his stock in Intapco on February 21, 1966 subsequent to this exchange. At the time of such sale, Intapco owned stock which had 50 percent

of the total combined voting power of all classes of stock entitled to vote of Ininco, Ltd., a corporation organized under the laws of the United Kingdom ("Ininco").

- (e) The holders of the preferred stock of Intapco were entitled to receive cumulative dividends from Intapco's earnings and profits or from its surplus at the rate of four dollars per share per annum if and as declared by the Board of Directors of Intapco. The holders of the preferred stock of Intapco had no other rights to current distributions of the earnings and profits of Intapco.
- (f) At all times during which Intapco owned stock of Ininco, stock possessing 50 percent of the total combined voting power of all classes of stock of Ininco entitled to vote was owned by and such voting power was exercised by Romney Finance Company, Ltd., a corporation organized under the laws of the United Kingdom ("Romney").
- (g) All of the outstanding stock of Romney was owned by Unex Investment Trust Limited ("Unex") throughout the period during which Romney owned any stock of Ininco. Unex is a corporation organized under the laws of the United Kingdom. During the period in which Romney owned stock of Ininco, no United States person (as defined in section 957(d) of the Internal Revenue Code) owned, directly or indirectly under the rules of section 958 of the Internal Revenue Code,

as much as 20 percent of any class of stock of Unex, and neither Intapco nor any stockholder of Intapco owned, directly or indirectly under such rules, any stock of Unex.

- (h) The first taxable year of Intapco began November 22, 1963, and ended on October 31, 1964, and its succeeding two taxable years ended on October 31, 1965, and February 24, 1966. The first taxable year of Ininco began on December 1, 1963, and ended on November 30, 1964, and its succeeding two taxable years ended on November 30, 1965, and May 3, 1966.
- (i) The earnings and profits of Ininco (computed in accordance with Treasury Regulations §1.1248-3(b)) were no greater than \$801,836.43 (£ 287,809.4.0 at \$2.786 per pound) for its taxable year ended November 30, 1964, and \$941,143.17 (£ 337,811.12.4 at \$2.786 per pound) for its taxable year ended November 30, 1965.

 The deficit in earnings and profits of Ininco (computed in accordance with Treasury Regulations § 1.1248-3(b)) was at least \$1,742,651.08 (£ 625,502.18.0 at \$2.786 per pound) for its taxable year ended May 3, 1966.
- (j) The taxable income of Ininco (computed in accordance with freesury Regulations §1.1248-4(d)) was no greater. than \$817,975.17 (b 293,602.0.0 at \$2.786 per pound) for its taxable year ended November 30, 1964 and \$968,449.81 (b 347,612.19.11 at \$2.786 per pound) for its taxable year ended November 30, 1965. The taxable income of Ininco (computed in accordance with Treasury Regulations §1.1248-4(d)) was zero for its taxable year ended May 3, 1966.
- (k) Ininco paid foreign income, war profits and excess profits taxes of at least \$16,138.74 (L 5,792.16.0

at \$2.786 per pound) with respect to income earned during its taxable year ended November 30, 1964, \$27,306.64 (59,801.7.7 at \$2.786 per pound) with respect to income earned during its taxable year ended November 30, 1965, and \$20,248.65 (57,268.0.0 at \$2.786 per pound) with respect to income earned during its taxable year ended May 3, 1966.

(1) For the calendar year 1966, the petitioners had net short-term capital loss of \$12,100, long-term capital loss carryover of \$2,592.19 and net long-term capital gain of \$949,752.04, including long-term capital gain of \$1,078,937.17 from the sale by the decedent of stock of Intapco.

WHEREFORE, the petitioners pray that this Court hear the case, determine that there is no deficiency in excess of \$3,600 due from the petitioners for the calendar year 1966, and grant whatever other relief is just and proper.

James B. Lewis

345 Park Avenue

New York, New York 10022

Alfred D. Youngwood

345 Park Avenue

New York, New York 10022

Counsel for Petitioners

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STATE OF NEW YORK SS.: COUNTY OF NEW YORK

ANNE K. WEISKOPF and SOLOMON LITT, being duly sworn, say that they are the Executors of the Estate of Edwin C. Weiskopf, deceased, a petitioner in the above cause; that they have read the foregoing amended petition and are familiar with the statements contained therein, and that the facts stated are true, except those stated to be upon information and belief, and that those they believe are true.

Anne K. Weiskopf, Executrix

Subscribed and sworn to before me this // day of June, 1969.

Notary Public

THOMAS A. REED
Notary Public, State of New York
No. 31-3229030
Qualified in New York County
Commission Expires March 50, 1971

Solomon Litt, Executor

Subscribed and sworn to before me this /c day of June, 1969

> Mustin Healy Notary Public

property; denies the remaining all

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COUNTY OF NEW YORK ()

ANNE K. WEISKOPF, being duly sworn, says that she is a petitioner in the above cause; that she has read the foregoing amended petition and is familiar with the statements contained therein, and that the facts stated are true, except those stated to be upon information and belief, and that those she believes it to be true.

Anne K. Weiskopf

Subscribed and sworn to before me this // day of June, 1969.

Notary Public

THOMAS A. REED
Notary Fublic, State of New York
No. 31-3229050
Qualified in flow York County
Commission Expires March 30, 1971

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TAX COURT OF THE UNITED STATES

Estate of EDWIN C. WEISKOFF, Deceased, ANGE K. WEISKOFF and SOLOMON LITT, Executors, and ANGE K. WEISKOFF, Surviving Vife,

FILED

1959 JUL 14 PM 4 59

TAX COURT OF THE Dockou No. LUNES STATES

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V a

COMMISSIONER OF INTERNAL REVENUE.

Rospondent.

ANSWER WO PETITION AS ANDINORD

THE RESPONDENT, in answer to the petition, as amended, filed in the above-entitled case, admits, denies and alleges as follows:

1 and 2. Admits the allegations of paragraphs 1 and 2 of the patition, as amended.

- 3. Admits that the Commissioner has determined a deficiency in income tax for the calendar year 1966 in the amount of \$461,465.57; denies the remaining allegations of paragraph 3 of the poblition, as smeaded; allegas that the entire enount of the deficiency is not in dispute.
- 4. (a) to (c), inclusive. Denies that respondent erred as alleged in subparagraphs (a) to (c), inclusive, of paragraph 4 of the patition, as exended.
- 5. (a) Admits that the decadent was a partner of Berhack Realty Associates, a calendar year pastnership for the calendar year 1966; denies the remaining ellegations of subparagraph (a) of paragraph 5 of the petition, as aroused.

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(b) Admits that Donhack Roalty Associates contributed property; denies the remaining allegations of subparagraph (b) of paragraph 5 of the petition, as amonded. (c) Denies the ellegations of subparagraph (c) of paragraph 5 of the petition, as emended. (a) Admits that decedent owned stock of Intapco, Inc.; also admits that decedent sold all of his stock in Interco on February 21, 1966 and that at the time of such cale, Intapco owned stock of Ininco, Ltd., a corporation organized under the laws of the United Kingdom; denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition, as amended; alleges that the sale of the stock of Intepeo, Inc. represented the sale of an interest in a controlled foreign corporation, Ininco, Ltd. (e) Danies the allegations of subparagraph (e) of paragraph 5 of the patition, as amended. (f) Admits that at all times during which Intapeo owned stock of Ininco, stock possessing 50 percent of the total combined voting power of all classes of stock of Ininco entitled to vote was owned by Rommey Finance Company, Ltd., a corporation organized under the laws of the United Kingdom; denies the remaining allegations of subparagraph (f) of paragraph 5 of the potition, as amonded. (g) Admits that all the outstanding stock of Rommey Was owned by Unex Investment Trust Limited ("Unex") and that Then is a corporation organized under the Laws of the United Kingdon; denies the remaining allegations of subparagraph (g) of paragraph 5 of the petition, as amended. - 2 -

(h) to (1), inclusive. Earlos the allogations of subparagraphs (h) to (1), inclusive, of paragraph 5 of the potition, as amended.

6. Denies generally each and every allegation of the petition, as amended, not hereinbefore specifically admitted,
qualified or denied.

WHENEFORE, it is prayed that the deficiency determined by
the respondent be in all respects approved.

| Sk. Marrin Worth, Sk.
| Internal Revenus Services.

OF COUNSEL:

MARVIN E. MACEN,
Regional Counsel,
AGAURA L. VORSAMORR,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor)
New York, H. Y. 10007

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WETED STATES PARCHATE OF EDWIN O. WITSKOFF, Ducoased, ANNE K. MEISFOFF and SOLOMON LITT. Executors, and hand K. WEISKEPA, Surviving Wife.

Petitionars,

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COMMISSIONER OF INTERNAL SEVENUE.

Respondent.

Docket 10. 1920-698

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AMENDMENT TO ANSWED

THE RISPONDENT, for emendment to the susper filed in the lies above-entitled tase, strikes subparagraphs (d) and (f) of paragraph of the enswer and in lieu thersof substitutes the 10110001111

(d) Admire that the decedent owned stock of latapco, Inc. Also coults the a da adenu sold all of his stock in Intapec on Polymory 21, 1000 and that at the time of such sale, Intapco owned stack of the sea, Lee,, a composable organized under the laws of the United Kingdon Deales the Remaining allegations of a yearpraph (d) of paragraph 5 of the audition, as awanded. william of the walk of the south of hitageo, Inc. was a sale 1. Some wally and that the cross-wowen described in subpersymph and of plangers to be the position as as maded, and in subscance all angular of general los also also general laines, hadsures it a constgraced as great size decorate proceeds.

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received by the pethologier from Inimon, Ltd. are texable under the provisions of Section 1248 of the Internal Revenue Code of 1955.

(f) 'Admins that ar all chass during which Indeped owned stock of Indeped of Indeped was outsed by Romae, Finance Company, Ltd., competation organized under the Laws of the United Kingdom. Venies the remaining allegations of subparagraph (f) of paragraph 5 of the paragraph is standed. Alleges that the stock of interes owned by becomey Finance Company, Ltd., constituted a good company.

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Lat of Hard. Jr.
Lating Chief Counsel.
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From the Day and Country of the Coun

TAX COURT OF THE UNITED STATES

EDWIN C. WHITEHEAD and JOSEPHINE WHITEHEAD,

Petitioners,

/

Docket No. 1934-69

COMMISSIONER OF INTERNAL REVENUE.

Respondent.

AMENDED PETITION

The above-named petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (correspondence symbols AU:R:90D) dated January 29, 1969, and as the basis of their case allege as follows:

- 1. The petitioners are individuals, husband and wife, residing at 859 Forest Avenue, Rye, New York. Their joint income tax return for the talendar year 1966 was filed with the District Director, Internal Revenue Service, at New York, New York.
- 2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioners on January 29, 1969.
- 3. The Commissioner has determined a deficiency in income tax for the calendar year 1966 in the amount of \$454,329.78, of which at least \$450,761.77 is in dispute.
- 4. The determination of tax set forth in the said notice of deficiency is based upon the following errors with respect to the taxable income of Edwin C. Whitehead (hereinafter referred to as the petitioner):

- (a) Disallowance of deduction of \$57,846.75 of the patitioner's distributive share of charitable contributions made by Benhack Realty Associates, a partnership.
- (b) Disallowance of deduction of \$200 of the petitioner's distributive share of loss of the said partnership.
- (c) Inclusion in gross income as a dividend under section 1248(a) of the Internal Revenue Code of all or any part of the \$1,094,950.72 profit allegedly realized by the petitioner upon sale of stock of Intapco, Inc. and, alternatively, improper computation of the limitation under section 1248(b) of said Code on tax attributable to such inclusion.
- 5. The facts upon which the patitioners rely as the basis of this case are as follows:
- (a) The petitioner Edwin C. Whitehead had a 50 percent distributive share of income, gains, losses, deductions and credits of Benhack Realty Associates, a calendar year partnership, for the calendar year 1966.
- (b) During 1965 Benhack Realty Associates contributed property having a fair market value of \$172,393.50 to organizations described in section 170(c) of the Internal Revenue Code.
- (c) On September 1, 1966, Benhack Realty Associates purchased a building which it immediately commenced using in its trade or business. The cost of the building was \$75,000, its useful life was 25 years and Benhack Realty Associates elected to depreciate it under the 150 percent declining balance method.

- (d) On February 21, 1955, the petitioner sold all of his stock of Intepco, Inc., a corporation organized under the laws of the State of New York. At the time of such sale, Intapco, Inc. owned stock which had 50 percent of the total combined voting power of all classes of stock entitled to vote of Ininco, Ltd., a corporation organized under the laws of the United Kingdom.
- (e) At all times during which Intepco, Inc. owned stock of Ininco, Ltd., stock possessing 50 percent of the total combined voting power of all classes of stock of Ininco, Ltd. entitled to vote was owned by and such voting power was exercised by Romney Finance Company, Ltd., a corporation organized under the laws of the United Kingdom.
- (f) All of the outstanding stock of Romney Finance Company,
 Ltd. was owned by Unex Investment Trust Limited throughout the period during
 which Romney Finance Company Ltd. owned any stock of Ininco, Ltd. Unex
 Investment Trust Limited is a corporation organized under the laws of the
 United Kingdom. During the period in which Romney Finance Company, Ltd.
 owned stock of Ininco, Ltd., no United States person (as defined in section
 957(d) of the Internal Revenue Code) owned, directly or indirectly under
 the rules of section 958 of the Internal Revenue Code, as much as 20 percent
 of any class of stock of Unex Investment Trust Limited and neither Intapco, Inc.
 nor any stockholder of Intapco, Inc. owned, directly or indirectly under
 such rules, any stock of Unex Investment Trust Limited.

- (g) The first taxable year of Intapco, Inc. began November 22, 1963, and ended on October 31, 1964, and its succeeding two taxable years ended on October 31, 1965, and February 24, 1966. The first taxable year of Ininco, Ltd. began on December 1, 1963, and ended on November 30, 1964, and its succeeding two taxable years ended on November 30, 1965, and May 3, 1966.
- (h) The earnings and profits of Ininco, Ltd. (computed in accordance with Treasury Regulations §1.1248-3(b)) were no greater than \$801,836.43 (£287,809.4.0 at \$2.786 per pound) for its taxable year ended November 30, 1964, and \$941,143.17 (£337,811.12.4 at \$2.786 per pound) for its taxable year ended November 30, 1965. The deficit in earnings and profits of Ininco, Ltd. (computed in accordance with Treasury Regulations §1.1248-3(b)) was at least \$1,742,651.08 (£625,502.18.0 at \$2.786 per pound) for its taxable year ended May 3, 1966.
- (i) The taxable income of Ininco, Ltd. (computed in accordance with Treasury Regulations \$1.1248-4(d)) was no greater than \$817,975.17 (5293,602.0.0 at \$2.785 per pound) for its taxable year ended November 30, 1964, and \$968,449.81 (5347,612.19.11 at \$2.786 per pound) for its taxable year ended November 30, 1965. The taxable income of Ininco, Ltd. (computed in accordance with Treasury regulations \$1.1248-4(d)) was zero for its taxable year ended May 3, 1966.
- (j) Ininco, Ltd. paid foreign income, war profits and excess profits taxes of at least \$16,138.74 (E5,792.16.0 at \$2.736 per pound) with respect to income earned during its taxable year ended November 30,

1964, \$27,306.64 (59,801.7.7 at \$2.786 per pound) with respect to income earned during its taxable year ended November 30, 1965, and \$20,248.65 (57,268.0.0 at \$2.786 per pound) with respect to income earned during its taxable year ended May 3, 1966.

(k) For the calendar year 1965, petitioners had a net short-term capital loss of \$6,476.73, a long-term capital loss carryover of \$1,457.67, a capital gain dividend of \$171.80, and a net long-term capital gain of \$1,039,448.88, including a long-term capital gain of \$1,120,937.16 from the sale of stock of Intapco, Inc.

WHEREFORE, the petitioners pray that this Court hear the case, determine that there is no deficiency in excess of \$3,568.01 due from the petitioners for the calendar year 1966, and grant whatever other relief is just and proper.

Mark H. Johnson

1301 Avenue of Americas New York, New York 10019

Counsel for Petitioners

Power of Attorney

I hereby appoint Edwin C. Whitehead my attorney in fact with full power to verify a petition to the Tax Court with respect to our joint and several liabilities for income tax for the year 1966, and to take such other action with respect to such proceedings as he shall deem necessary.

Dated: April 21, 1969

(Sgd) JOSEPHINE WHITEHEAD

Josephine Whitehead

COUNTY OF Wistehester)

EDWIN C. WHITEHEAD, being duly sworn, says that he is a petitioner in the above cause; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

The foregoing verification is made also on behalf of Josephine Whitehead, the other petitioner herein, who is absent from the United States. Such verification is pursuant to a power of attorney a copy of which is attached hereto, and which has not been revoked.

Edwin C. Whitehead

Subscribed and sworn to before me this 13 th day of June, 1959.

Notary Public

JOSEPHINE O. BRINKERHOFF Notary Public, State of New York No. 60-5452835 Qualified in New York County Certificate Fred in Westchester County Commission Expires March 30, 1970

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TAX COURT OF THE THIRD STATES

EDWIN C. WHITEFEAD and JOSEPHINE WHITEFEAD,

FILED

Petitioners,

1969 JUL 14 PM 4 59

V.

Docket No. 1934-69

9 TAX COURT OF THE UNITED STATES

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ANSWER TO PETITION, AS AMENDED

THE RESPONDENT, in answer to the petition, as amended, filed in the above-entitled case, admits, denies and alleges as follows:

- 1. Admits the allegations of paragraph 1 of the patition, as amended; alleges that their present residence is their legal residence; also alleges that the notice of deficiency was mailed to the patitioners at their last known address.
- 2. Admits the allogations of paragraph 2 of the potition, as amended.
- 3. Admits that the Commissioner has determined a deficiency in income tex for the calendar year 1966 in the amount of \$454,329.78; denies the remaining allegations of paragraph 3 of the petition, as amended; alleges that the entire amount of the deficiency is not in dispute.
- 4. (a) to (c), inclusive. Denies that the respondent erred as alleged in subparagraphs (a) to (c), inclusive, of paragraph 4 of the petition, as amended.
- 5. (a) Admits that petitioner Eduin C. Whitehead had a distributive share of Benhack Realty Associates, a calendar year partnership; denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition, as exceeded.

031A(b) Admiss that Benhack Realty Associates contributed property; denies the remaining allegations of subparagraph (b) of paragraph 5 of the petition, as amended. (c) Denies the allegations of subparagraph (c) of paragraph 5 of the petition, as amended. (d) Admits that on February 21, 1966, the petitioner, Edwin C. Whitehead sold all of his stock of Intapco, Inc. and that at the time of such sale, Intapco, Inc. owned stock of Iningo, Ltd., a corporation organized under the laws of the United Mingdom; denies the remaining allegations of subparagraph (d) of paragraph 5 of the petition, as amended; alleges that the sale of the stock of Intapco, Inc. represented the sale of an interest in a controlled foreign corporation, Ininco, Ltd. (e) Admits that at all times during which Intapco, Inc. owned stock of Ininco, Ltd., stock possessing 50 percent of the total combined voting power of all classes of stock of Ininco, Ltd. entitled to vote was owned by Rowney Finance Company, Ltd. a corporation organized under the laws of the United Kingdom; denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition, as amended. (f) Admits that all of the outstanding stock of Rommey Finance Company, Ltd. was owned by Uner Investment Trust Manited and that Unex Investment Trust Iduited is a corporation organized under the laws of the United Kingdom; denies the remaining allegations of subparagraph (f) of paragraph 5 of the petition, as arended. - 2 -

paragraphs (g) to (k), inclusive. Denies the allogations of subparagraphs (g) to (k), inclusive, of paragraph 5 of the petition, as amended.

6. Denies generally each and every allegation of the
petition, as amended, not hereinbefore specifically admitted,
qualified or denied.

WHEREFORE, it is prayed that the deficiency determined
by the respondent be in all respects approved.

K. MARTIN WORTHY, Or
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Councel,
ACATHA L. VORSANGER,
Attorney,
Internal Revenue Souvice,
26 Federal Plaza (12th Floor)
New York, N. Y. 10007

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UNITED STATES TARIFERN G. WHITTENEAD and JOSEPHINE WHITEHIAD,

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Docket No. 1934-69

UNITED STATES

TAX COURT

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COMMISSIONER OF THIERNAL REVENUE.

V .

Respondent.

AMENDE FOR TO ANSWER

THE RESPONDENT, for accomment to the answer filed in Jobes above-entitled case, strikes subparagraphs (d) and (e) of files paragraph 5 of the energy and in lieu thereof substitutes the following:

(d) Adries that on February 21, 1966, the petitioner, Edwin C. Whiteshead, sold all of the stock of Emusico, Inc. and that at dwe time of such sale, freater, Inc., owned stock of Ininco, Esta, a comperation organized under the laws of the United Elegion. Denies the consisting atlegations of subparascape (d) of panagraph 5 of the putation, as amended. Alleges test are sale of the stock of Israpio, fac, was a sale in form only and that the transaction discoulded in subpringraph (d) of paragraph 5 of the pecition, as amended, was in substance a I guider on al humes, bud. They alleges then Teines, had. with a carbicalled foreign company on and dust site proceeds rs clock by the positional from Jerney, Lon and carable under SERVED JULI 1

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the provisions of Section 1248 of the Internal Revenue Code of 1954.

(e) Admins that at all times during which Interes, Inc. owned speck of induce, Ltd., stock of induce, Ltd. was owned by Romney Vinance Company, Ltd., a comporation organic ad under the laws of the United Kängdom. Denies the remaining allegations of subparagraph (e) of paragraph 5 of the petition, as smended. Alleges that the stock of induce, Ltd., cared by Romney Finance Company, Ltd., constituted a creditor interest.

WHIBEFORE, the respondent prays that the Court grant the prayer requesced in his original answer.

Acting Chief Counsel, Internal Revenue Service.

OF COMMERCE

MARCIN R. PASSK,

deglossi Jouns I.,

AGAINA D. Petrowell,

Staff residence

From the Explosel Counsel,

Price and Reviews Service,

26 Redered Plazz (Elch Place),

New (Odr. Ecq York, 1966)

UNITED STATES TAX COURT

Estate of EDWIN C. WEISKOPF, Deceased, ANNE K. WEISKOPF and SOLOMON LITT, Executors, and ANNE K. WEISKOPF, Surviving Wife,

Petitioners,

v.

Docket No. 1920-69

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JOSEPHINE WHITEHEAD,

Petitioners,

V.

Docket No. 1934-69

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that for the purposes of these consolidated cases the facts hereinafter stated shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of any party to introduce upon the trial of these cases any other and further evidence not at variance with the facts herein stated and reserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits as they may deem to be irrelevant and immaterial.

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The use of the word "stock" or "share" in this stipulation is descriptive only and does not constitute an admission by respondent of the nature of the interest it represents. The use of the words "sale", "sold, "purchased", etc. in this stipulation in connection with the agreement with HongKong Holdings Limited, which agreement is referred to herein as Joint Exhibit 20-T, is descriptive only and does not constitute an admission by respondent that the transaction was a sale.

- 1. Petitioners in Docket No. 1920-69 are Anne K. Weiskopf and Solomon Litt, the duly qualified and acting executors of the Estate of Edwin C. Weiskopf (hereinafter referred to as "Weiskopf"), who died a resident of New York, New York, on February 7, 1968, and Anne K. Weiskopf, Weiskopf's surviving wife. The legal residence of all such petitioners at the time of the filing of the petition was New York, New York.
- 2. Petitioners in Docket No. 1934-69 are Edwin C. Whitehead (hereinafter referred to as "Whitehead") and Josephine Whitehead, who were husband and wife during the calendar year 1966 and maintained their legal residence at the time the petition in this case was filed at 859 Forest Avenue, Rye, New York.
- 3. Weiskopf and his wife timely filed their joint Federal income tax return (Form 1040) for the calendar year 1966 with the District Director for the Manhattan District

of New York. A copy of such Federal income tax return is attached hereto as Joint Exhibit 1-A and made a part hereof.

- 4. Whitehead and his wife timely filed their joint Federal income tax return (Form 1040) for the calendar year 1966 with the District Director for the Manhattan District of New York. A copy of such Federal income tax return is attached hereto as Joint Exhibit 2-B and made a part hereof.
- 5. Intapco, Inc. (hereinafter referred to as "Intapco") was incorporated on November 22, 1963 under the laws of the State of New York. A copy of the Certificate of Incorporation and By-laws of Intapco are attached hereto as Joint Exhibits 3-C and 4-D, respectively, and made a part hereof.
 - 6. Upon the incorporation of Intapco, Whitehead subscribed to 70 shares of common stock of Intapco and he paid \$7,000 for said shares, and Weiskopf subscribed to 490 shares of preferred stock of Intapco and he paid \$49,000 for said shares. At the same time, Intapco and Weiskopf entered into an agreement, dated November 24, 1963. A copy of such agreement and of minutes of the meetings of the Board of Directors of Intapco held on November 24, 1963 and November 29, 1963, are attached hereto as Joint Exhibits 5-E, 6-F, and 7-G, respectively, and made a part hereof. A copy of minutes of the meeting of shareholders of Intapco held on November 24, 1963 is attached hereto as Joint Exhibit 8-H and made a part hereof.
 - 7. A copy of an agreement between Weiskopf, Whitehead and Intapco dated December 6, 1965, is attached hereto as

Joint Exhibit 9-I and made a part hereof.

- 8. Intapco was formed for the holding of stock in Ininco, Ltd. (hereinafter referred to as "Ininco"). Intapco earned no income and did not file federal corporate income tax returns. It filed New York State franchise tax returns.
- 9. Ininco, a corporation organized under the laws of the United Kingdom, was incorporated on November 28, 1963. It qualified as an Overseas Trade Corporation under United Kingdom law, and as such was exempt from United Kingdom income and profits tax on its trading income from outside the United Kingdom. A copy of the Articles of Association of Ininco is attached hereto as Joint Exhibit 10-J, and made a part hereof. A copy of a letter dated March 15, 1966 from Inland Revenue of the United Kingdom to Messrs. Touche, Ross, Bailey and Smart, and a copy of other documents from Inland Revenue of the United Kingdom dated February 28, 1966 are attached hereto as Joint Exhibits 11-K and 12-L, respectively, and made a part hereof.
- 10. The share capital of Ininco was divided into three classes of stock as follows: (a) 250 Preferred Ordinary Shares of 100 pounds each; (b) 250 Deferred Ordinary Shares of 10 pounds each; and (c) 175 Second Preferred Ordinary Shares of 100 pounds each. From the inception of Ininco

and through February 24, 1966, Romney Finance Company Limited (hereinafter referred to as "Romney") owned all the 250 Preferred Ordinary Shares of Ininco, for which it paid 25,000 pounds, and Intapco owned all the 250 Deferred Ordinary Shares and all the 175 Second Preferred Ordinary Shares of Ininco, for which it paid 2,500 pounds and 17,500 pounds, respectively. As provided in the Articles of Association of Ininco, the Preferred Ordinary shares and the Deferred Ordinary shares were entitled to one vote per share and a majority of each such class of stock was entitled to appoint not more than two directors of Ininco. The Second Preferred Ordinary shares had no voting rights. During all periods relevant to this proceeding the Board of Directors of Ininco consisted of four directors.

- 11. Ininco sold, in Western Europe, "AutoAnalyzers" manufactured by Technicon Instruments Company, Ltd., a corporation organized under the laws of the United Kingdom. The "AutoAnalyzers" were manufactured under patent rights held by Technicon Instruments Corporation, a New York corporation wholly owned by Weiskopf and Whitehead. Technicon Instruments Company, Ltd. was a wholly-owned subsidiary of Technicon Instruments Corporation.
- 12. Romney, a corporation organized under the laws of the United Kingdom, was incorporated on November 28, 1962.

 At all times relevant to this proceeding all of the outstanding shares of Romney were owned by Unex Investment Trust Limited (hereinafter referred to as "Unex"), a corporation organized under the laws of the United Kingdom. A copy of the Memorandum

and Articles of Association of Romney is attached hereto as Joint Exhibit 13-M and made a part hereof.

- 13. At all times relevant to this proceeding, no United States person (as defined in section 957(d) of the Internal Revenue Code) owned, directly or indirectly under the rules of section 958 of the Internal Revenue Code, 20 percent or more of any class of stock of Unex and no stockholder of Intapco owned, directly or indirectly under such rules, any stock of Unex.
- "Shareholders Agreement" was entered into between Intapco,
 Romney and Ininco. A copy of this agreement is attached hereto
 as Joint Exhibit 14-N and made a part hereof.
- November 22, 1963 and ended on October 31, 1964, and its succeed; two taxable years ended on October 31, 1965 and February 24, 1966 respectively.
- 16. The first taxable year of Ininco began on December 1, 1963 and ended on November 30, 1964, and its succeeding taxable year ended on November 30, 1965.
- 17. There was no written agreement between Ininco and Technicon Instruments Company, Ltd. relating to the sale of "AutoAnalyzers" by Ininco for an extended period of time beyond the fulfillment of orders.
- 18. The special treatment accorded by the United Kingdom to Overseas Trade Corporations was abolished by legislation enacted in 1965 and effective as of April 6, 1966.

19. In June, 1965, Griffin, Lynch & Co. a firm of chartered accountants whose main office was in Dublin, Ireland, applied to the Republic of Ireland on behalf of Technicon

Instruments Corporation for a grant which was offered by the Government of Ireland in August, 1965. In 1966 "AutoAnalyzers" were manufactured and sold by Technicon (Ireland) Ltd., an Irish corporation wholly owned by Weiskopf and Technicon Instruments

Corporation. The Irish tax laws applicable to Technicon (Ireland) Ltd. provide for a complete abatement until December 31, 1981 of corporate income and dividend withholding taxes on profits derived from its sales of products manufactured in the Republic of Ireland but sold elsewhere.

between February 21, 1966 and Maria 22 2066.

of Directors of Intapco held on February 21, 1966 is attached hereto as Joint Exhibit 15-0 and made a part hereof. A copy of the resignations from the Board of Directors of Intapco of Weiskopf, Whitehead and James J. Roros, dated February 21, 1966, are attached hereto as Joint Exhibits 16-P, 17-Q, and 18-R, respectively, and made a part hereof. A copy of the minutes of the meeting of shareholders of Intapco held on February 24, 1966 is attached hereto as Joint Exhibit 19-S and made a part hereof.

- 22. A copy of an agreement between Weiskopf, Whitehead and HongKong Holdings Limited dated February 21, 1966 is attached hereto as Joint Exhibit 20-T and made a part hereof.
- 23. Weiskopf and Whitehead received the following amounts from HongKong Holdings Limited pursuant to the agreement dated February 21, 1966, referred to above as Joint Exhibit 20-T.

March 1, 1966	\$ 100,000.00
March 15, 1966	500,000.00
March 16, 1966	681,278.02
March 22, 1966	450,000.00
March 22, 1966	150,000.00
March 23, 1966	249,620.13
May 4, 1966	124,976.18
Total	\$2,255,874.33

The total amount received by Whitehead for his stock in Intapco was \$1,100,654.16. The total amount received by Weiskopf for his stock in Intapco was \$1,155,220.17.

- 24. Whitehead's basis for his investment in Intapco was \$7,000.00. Weiskopf's basis for his investment in Intapco was \$49,000.00.
- 25. If it is determined that Ininco was a controlled foreign corporation within the meaning of section 957 of the Internal Revenue Code and that Whitehead and Weiskopf are taxable as provided in section 1248 of the Internal Revenue Code in respect of stock of Ininco, then for the purposes of section 1248 of the Internal Revenue Code:

- (a) The earnings and profits of Ininco (computed in accordance with Treasury Regulations issued under section 1248 of the Code) for its taxable years ended November 30 1964, and November 30, 1965, were \$801,836.43 and \$941,143.17, respectively. The earnings and profits of Ininco (so computed) for its last taxable year were \$500,078.92 unless the amounts of 500,000 pounds and 305,000 pounds referred to in Joint Exhibits 28-BB and 29-CC were distributions out of earnings and profits within the meaning of Treasury Regulations section 1.1248-3(b)(3).
- taxes paid by Ininco for its taxable years ended November 30, 1964 and November 30, 1965, were \$16,138.74 and \$27,306.64, respectively. The income, war profits and excess profits taxes paid by Ininco for its last taxable year were \$20,248.65.
- (c) For the purposes of the computation under section 1248(b)(2) of the Internal Revenue C de, Weiskopf and his wife had (without regard to the Intapco transaction) a loss of \$143,877.32 from the sale or exchange of capital assets, and Whitehead and his wife had (without regard to the Intapco transaction) a loss of \$89,250.88 from the sale or exchange of capital assets.
- 26. Copies of the following documents are attached hereto as Joint Exhibits and made a part hereof:
- (a) Joint Exhibit 21-U, minutes of the first meeting of directors of Ininco held on November 29, 1963.

- (b) Joint Exhibit 22-V, minutes of the meeting of directors held on November 29, 1963.
- (c) Joint Exhibit 23-W, minutes of the meeting of directors of Ininco held on December 12, 1963.
- of directors of Ininco held on June 10, 1964.
- (e) Joint Exhibit 25-Y, minutes of the meeting of directors of Ininco held on November 25, 1964.
- (f) Joint Exhibit 26-Z, minutes of the meeting of directors of Ininco held on March 14, 1966 at 10:30 A.M.
- (g) Joint Exhibit 27-AA, minutes of the meeting of directors of Ininco held on March 14, 1966 at 11:00 A.M.
- (h) Joint Exhibit 28-BB, minutes of the meeting of directors of Ininco held on March 14, 1966 at 11:30 A.M.
- (i) Joint Exhibit 29-CC, minutes of the meeting of directors of Ininco held on March 21, 196.
- (j) Joint Exhibit 30-DD, minutes of the extraordinary general meeting of Ininco held on March 23, 1966.
- (k) Joint Exhibit 31-EE, balance sheet of Ininco as of devember 30, 1964.
- (1) Joint Exhibit 32-FF, profit and loss statement of Ininco for the period ended November 30, 1964.
- (m) Joint Exhibit 33-GG, balance sheet of Ininco as of November 30, 1965.

Company, Ltd. were:

Edwin C. Weiskopf Edwin C. Whitehead William Robert Carr Leslie James Evans

legal and professional fees was properly disallowed. The partnership depreciation destroy allowable was \$1,240.00. Therefore Weiskopf and Whitehead each had a \$10,133.10 distributive share of Benhack ordinary loss.

34. The payments to Associated Company referred to in the minutes of the board of directors of Ininco of March 14, 1966 (Ex. 26-Z) and the profit and loss statements of Ininco (Exs. 32-FF and 36-JJ) were payments to Technicon Instruments Company, Ltd. made pursuant to meetings with the Inland Revenue Authorities who considered the earnings of Technicon Instruments Company, Ltd. and Ininco and requested that the adjustments be made.

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THE WITNESS: Edwin C. Whitehead, 66 Vista Drive, Greenwich, Connecticut.

DIRECT EXAMINATION

BY MR. GOLDFEIN:

Q Mr. Whitehead, are you one of the Petitioners in this case?

A I am.

Q What is your occupation, Mr. Whitehead?

A I'm Chairman of the Board of the Technican Corporation and its associated companies.

Q What are your affiliations, Mr. Whitehead, with organizations unrelated to Technicon and its subsidiaries?

A Well, I'm a Trustee of New York University and also of Rockefeller University and I'm on the Board of Governors of the United Nations Association and on the Board of Trustees and Executive Committee of* the Institute for International Education. In addition, I'm on the Board of the Westchester Urban League, the Westchester Cancer* Society and a number of local organizations.

Q During the years 1960 through 1966, Mr. Whitehead,

A I was President of Technicon.

Q Is Technicon Instruments Corporation today a listed company?

A Yes, it is. It's listed on the New York Stock Exchange.

Q And during the period 1963 through 1966, was Technicon Instruments Corporation a listed company?

A No, it wasn't.

Q Who owned the shares of that company at that time?

A My father and myself.

Q Mr. Whitehead, so that the Court can have a background of the nature of the business and the history of Technicon Company, would you please, as briefly as possible, describe some of the background and its present situation?

A The Technicon was founded in 1939 by my father and I joined in six months later. We were in the business of making scientific instruments primarily. The major instruments were used in medical things. Our biggest success, started in 1957 with the advent of the autoanalyzer. The autoanalyzer is an instrument that performs automatic chemical analysis and it was originally devised to perform such analysis in blood.

Today it's widely used. There are multi-thousands of them in use in hospitals around the world. I would say it's more common than uncommon in hospitals, hospital laboratories and

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it's made, I think, a rather profound change in the practice. of medicine. Prior to the autoanalyzer, a doctor would use the laboratory to confirm his clinical judgement, that which he found with the patient and he did not use it to form his diagnosis. That isn't a subtle* thing, that's a rather different aspect. And today, I would think the doctor uses the laboratory to form his judgement mainly because of the increased accuracy and reliable results. The other profound change it's had and has been a very strong factor in our overall business is the* fact that it was discovered by us and others that the work of doing blood analysis is drawing the blood and keeping track of it in the laboratory rather than perform the analysis. That has become automatic and today it's common that 12, 18 or 20 tests are performed every time blood is drawn which gives the doctor a profile of the patient's state of health and perhaps is a real help. It's a real change, I think, in being able to predict disease before it's symptomatic. Autoanalyzers are used for lots of other things, for air pollution monitors and water pollution monitoring, in the pharmaceutical industry to measure protein in grain and cereal, lots of other things. But, its major use is in medical laboratories.

Q Thank you. Could you tell me approximately what is the volume of current sales of the Technicon consolidated

A Last year we ran at 110 million, this year we're

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Q Thank you. Now, during the period, and we'll try to focus in on the period 1963 through 1966, but during this period, in what countries did Technicon Instruments Corporation have manufacturing facilities?

A Prior to 1963?

Q No, I first would like to know, during this period.

A The U.K., the United Kingdom and the United States.

Q Now, insofar as the U.K. facility, was that in Technicon Instruments Company, Limited, a U.K. corporation?

A Yes, it was.

Q Now, prior to 1963, for which markets did the U.K. facility, Technicon Instruments Corporation -- Company, Limited, manufacture products?

A For the U.K. and I think, to some extent, to the Commonwealth because of preferential tariffs.

Q Prior to 1963, for which markets did the U.S. facility, Technicon Instruments Corporation, manufacture products?

A The world market with the exception of cours, of the U.K. and some Commonwealth countries.

Q Prior to 1963, the U.K. facility, Technicon Instruments, Limited, was a limited one in terms of production; is that right?

A Yes.

1	Q Now, what was Ininco Limited?
2	. A It was what is called in Great Britain, an
3	overseas trading corporation. I think this is, in response
.4	to legislation by the British Government to encourage exports
5	there were certain favorable conditions under which an
6	overseas trading corporation could operate.
7	Q Now, who owned Ininco?
8	A Ininco was owned by Romney Holdings Romney
. 9	Finance, I'm sorry and Intapco.
10	Q And do you recall who owned Intapco?
11	A Intapco was owned by my father and myself.
12	Q Intapco was a U.S. corporation, is that right?
13	A It was.
14	Q What was your purpose in establishing Ininco?
15	A To take advantage of the benefits offered by the
16	British Government which allowed us to build up capital to
17	finance our rapidly expanding export business, our sales in
18	countries other than the U.S.
19	Q Did this coincide with your decision to expand the
20	U.K. manufacturing facility?
21	A It certainly did.
22	Q And who advised the formation of Ininco?
23	A What individual?
24	Q Yes.
25	A Hr. Carr and our tax advisor there as well.

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in Ininco?

- A 50 per cent.
- Q And car you recall why Romney was offered this 50 per cent of the voting rights in Ininco?
 - A To comply with the British regulation.
 - Q Who advised you that this was necessary?
 - A Mr. Carr.
- Q What concerns did you have in having Romney a 50 per cent -- having 50 per cent of the voting rights in Ininco?

A I had many reservations about it and was very reluctant to provide it. We had, for 30 years, operated a business with no outside investors, ever and my father and myself and this was a first and we were very, very reluctant to do so. And it was a marked question in our minds, a matter of balancing the benefits of the overseas trading corporation versus the detriment of having an equal partner in one of our corporations.

Q How did you think this might affect the possibility of tying up capital?

MS. VORSANGER: Your Honor, I object to that question as speculative.

MR. GOLDFEIN: Your Honor, I'm trying to get at the thinking of Mr. Whitehead in his consideration of having Romney as a shareholder. It's not speculative, he'll testify whether it's speculative.

THE COURT: Objection overruled. You may answer.
THE WITNESS: Would you repeat the question?
BY MR. GOLDFEIN:

Q The question as, how did it affect the tying up of capital.

A That, of course, was one of our major considerations in having an equal partner. You must remember we were an American company, two Americans making a deal with essentially a stranger in Great Britain and this deal was over a rather important aspect of our overall business strategy, namely, the ability to build up enough capital to finance our foreign operations which today are almost 50 per cent of our total operation, total sales. And, if we had a falling out with Mr. Romney, I think he could have rather effectively have tied up the operation of our business, certainly tie up the capital. So, we were very tense, to use the vernacular, about doing that.

Q You used the term Mr. Romney, I think you meant Mr. Franklin.

A Well, with Romney Finance or Mr. Franklin, either one or both.

Q Mr. Whitehead, what was your U.S. tax considerations in giving Romney 50 per cent of the voting rights?

A There weren't any.

Q Did you or your father, to your knowledge,

individually or through any agent, make any written or oral
agreements with any representative of Romney regarding how
they should exercise Romney's voting rights?

MS. VORSANGER: I object to part of that question

MS. VORSANGER: I object to part of that question at least insofar as it relates to his father as no foundation was made for that question, Your Honor, as to whether he had any knowledge.

THE COURT: Objection sustained. Restate the question.

BY MR. GOLDFEIN:

Q Did you make any written or oral agreement with any representative of Romney regarding how Romney should exercise its voting rights?

A No, we did not.

Q To your knowledge, did your father make any such agreement?

A No, he did not.

Q Is your father living?

A No, he is not.

Q When did he die?

Λ 1963.

Q To your knowledge, did any entity of which you were affiliated or your father was affiliated, make any such agreement?

A No.

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1	Q Did any agent of yours make any such agreement?
2	A No, not that I know of.
3	Q Was there any oral or written agreement or
4	understanding that Romney would not vote its shares or would
5	vote them in a certain way, to your knowledge?
6	Λ No.
7	Q Was there any oral or written agreement or
8	understanding that Romney would vote its shares in accordance
9	with instructions or desires of you?
10	A No.
11	Q Of your father, to your knowledge?
12	A No.
13	Q Of Technicon Instruments Corporation, to your
14	knowledge?
15	A No.
16	Q Any other person designated by you, to your
17	knowledge?
18	A No.
19	Q Either prior to or after Rommey's investment in
20	Ininco, to your knowledge, was there any financial relation-
21	ship other than the investment in Ininco between Unex or
22	Romacy on the one hand and yourself or your father on the
23	other hand?
24	Λ No, there was not.
25	MS. VORSANGER: Excuse me. Your Honor. Could I

have that question and answer repeated? It was a lengthy 1 question and I missed the significance of it. 2 3 THE COURT: All right, Mr. Reporter, will you 4 have the question and answer played back? 5 (Whereupon, the pending question and answer 6 were played back.) 7 THE COURT: You may proceed. 8 MR. GOLDFEIN: Thank you. 9 BY MR. GOLDFEIN: 10 Mr. Whitehead, can you recall why you sold Q 11 Intapco? 12 Yes, the regulations in Great Britain changed A which no longer gave us the benefits of Ininco*; 13 14 And can you recall how the sale of your Intapco 15 shares were carried out? 16 MS. VORSANGER: It's understood, Your Honor, that 17 the characterization of the transaction of the sale --18 THE COURT: I understand. We'll call it a sale 19 for the purposes of this trial. I understand your position. 20 BY MR. GOLDFEIN: 21 Let me repeat the question. Do you recall how 22 your sale of Intapco shares was carried out insofar as who 23 you sold it to? 24 They were sold to a company that I believe was A 25 called Hong Hong Holding.

prior operation in the United Kingdom? _ C62A

MS. VORSANGER: I think I'm going to object to that question, Your Henor.

THE COURT: What's the relevancy of it, Mr. Goldfein?

MR. GOLDFEIN: In the stipulation, we have stipulated that Ireland came in after the United Kingdom. I want to complete the record so that we know exactly what happened when we formed Ireland and what the difference was between Ireland and the United Kingdom.

THE COURT: You mean the difference between the operations in Ireland and the operations in the United Kingdom?

MR. GOLDFEIN: No, it's really a matter of finishing out the record. In the United Kingdom there was the tax exemption on the selling end whereas in Ireland there was a tax exemption on the manufacturing and the selling end of it.

THE COURT: It's stipulated and it's in the Stipulation and I think that's enough of that.

MR. GOLDFEIN: Ohay, fine. I think I might just ask this question. Did the tax exemption in Ireland cover your entire operations insofar as manufacturing in Ireland?

THE WITNESS: Manufacturing and selling.

BY MR. GOLDFEIN:

Q And what became of your manufacturing facility in

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overruled, ma'am.

manufacturing operations in the United Kingdom? MS. VORSANGER: No, Your Honor. THE COURT: There isn't? HS. VORSANGER: No. THE COURT: I would like to know. You're

MR. GOLDFEIN: Let me rephrase the question, Mr.

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1	Whitehead. What became of the manufacturing operations in	
2	the United Kingdom after you commenced operations in Ireland?	
3	THE WITNESS: It shrunk considerably. We	
4	continued to manufacture but on a much smaller scale merely	
5	for the British home market because, to protect our patents.	
. 6	The patent law is such in England that you have to use a	
7	patent to	
8	THE COURT: Is it still in operation today?	
9	THE WITHESS: I think we wound it down with the	
10	expiration of the basic patents.	
11	THE COURT: You may proceed.	
12	MR. GOLDFEIN: Thank you, Mr. Whitehead. You may	
13	cross examine.	
14	MS. VORSANGER: Your Honor, may I have a five-	
15	minute recess?	
16	THE COURT: Yes, we'll take a five minute recess.	
17	(Whereupon, a short recess was taken.)	
18	MS. VORSANGER: May I proceed, Your Honor?	
19	THE COURT: Yes, you may.	
20	CROSS EXAMINATION	
21	BY MS. VORSANGER:	
22	Q Your testimony this morning was that during 1963	
23	through '66, you were the President of Technicon?	
24	Λ That's true.	
25	Q Who was the Chairman of the Board?	
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1	* 4	My father.
2	Q	This would be all the Technicon corporations?
3	Α	Well, most of them. There may have been minor
4	operations	
5	Q	Who were the officers, first of Technicon
6	Instrument	s Corporation?
7	A	My father and myself.
8	Q	That's all?
9 .	A	I believe so.
10	Q	Was Mr. Evans an officer or employee of Technico
11	Instrument	s Corporation?
12	А	I don't believe he was an employee of Instrument:
13	Corporatio	on.
14	Q	Was he a director of Instruments Corporation?
15	A	I don't believe so.
16	Q	Who were the officers of Technicon Instruments
17	Limited?	
18	Δ	I think Mr. Evans and myself and my father.
19	There migh	at have been a fourth director.
20	Q	Director I'm asking you about officers.
21	A	Oh, I'm sorry. I think the answer is the same.
22	Q	The same. Now, was Mr. Evans the operating head
23	of Technic	con Limited?
24	Λ	Yes, he was.
25	Q	Now, he was also an alternate director of Ininco

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1	was he not?
2	A No, I don't believe he was.
3	MR. GOLDFEIN: Excuse me, I think the documentary
4	evidence explains who the directors were and the alternate
5	directors. I think this type of inquiry, if it's in the
6	record, really isn't appropriate.
7	THE COURT: I think it's in the Stipulation, isn'
8	it?
9	MR. GOLDFEIN: Yes.
10	BY MS. VOR ANGER:
11	Q Mr. Evans who were the officers of Ininco?
12	A I don't remember. I don't remember. Mir. Evans
13	undoubtedly was.
14	Q Mr. Evans undoubtedly was.
15	A Yes. Ask Mr. Carr.
16	Q Well, who ran Ininco for you?
17	A Mr. Evans for all intents and purposes.
18	Q Mr. Evans. That would mean that he was the
19	Managing Director of Ininco?
20	A In practice, certainly.
21	Q Now, did Ininco

MR. GOLDFEIN: Excuse me, Your Honor, I just want to make one point here because Counsel has just led the witness into --

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MS. VORSANGER: It's cross examination.

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MR. GOLDFEIM: No, I realize that but the 1 Stipulation refers to who the directors are, Mr. Evans was no! 2 a director. I think Mr. Whitehead's response was proper in 3 4 practical application, he was like a managing director but he was not a director. He was an alternate director. The 5 6 Stipulation clearly sets this forth. I'm only saying this so 7 that we can have a clear testimony. MS. VORSANGER: I'm seeking to elicit some testimon 9 from the witness. 10 THE COURT: You may continue, Ms. Vorsanger. 11 MS. VORSANGER: It really is not the occasion for 12 Counsel to testify. 13 BY MS. VORSANGER: 1.1 Now, Ininco, as I understand it, Mr. Whitehead, 15 did not have its own separate corporate headquarters, is that 16 correct, in England? 17 A Separate headquarters? I don't believe so. 18 It was basically operated out of the Technicon 19 Instruments Limited office; is that not correct? 20 It had an office in Hollandt That could have been 21 the corporate headquarters. I'm not sure of the arrangement 2.2 but Hr. Carr would probably know. 2:3 Q But in England, insofar as its operations in 24 England, they were conducted out of the Technicon Instruments

Limited office; is that not correct?

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Now, the employees of Ininco were basically sales people, is that not correct?

I would think so, yes.

I believe so.

. Now, I would like to elicit some testimony from you Mr. Whitehead, as to the patent rights to the autoanalyzer. We have stipulated that they were owned by Technicon Instruments Corporation. Now, I'd like to backtrack a little bit. The employees of Ininco that we have just seen were mostly salespeople; were they, when you first formed Ininco, had they been employees of Technicon Instruments, Limited?

I think Technicon Instruments, Limited and a bunch of other companies.

Other Technicon companies?

Perhaps.

Now, we go back to the patent rights. Stipulation indicates the patent rights to the autoanalyzer was owned by the United States Technicon; is that correct?

Yes.

Did Technicon Instruments Limited have a written Q license to manufacture the autoanalyzer?

I don't recall specifically. I would imagine so.

Q Well, tell us about it.

I don't recall it, I'm sorry. I don't recall the specific nature of an agreement*

069A . 41 1 but I assume that there would have been an agreement. 2 You assume there would have been a written 3 agreement? Λ I assume so, yes. 5 Could we have that agreement produced? Q 6 I can't answer you. I don't know. If we can find A 7 it, certainly. 8 HR. GOLDFEIN: Excuse me, Your Honor. Your Honor, 9 I don't think this is a proper cross examination question. 10 Could we have it produced? We're at trial here and I don't 11 think that's -- the question was asked. He answered it. 12 MS. VORSANGER: Is there an objection to the 13 question? I don't understand these constant comments of 14 Counsel. I asked the question. If the question is 15 objectionable, that's one thing. If he doesn't like the 16 answer, it's too bad. 17 MR. GOLDFEIN: Your Honor, I didn't hear the 18 answer. The question is objectionable. 19 THE COURT: The question wasn't objectionable. 20 mean, what's the relevancy of it, Ms. Vorsanger, whether 21 there was a written license; whether or not Technicon 22 Instruments Limited had a written license to manufacture the 2:3 autoanalyzers? 24 MS. VORSAMGER: Well, Your Monor, because we've 25 been trying to find out whether or not there is such a written Our United States sourcels

1 license and we haven't been able to get one.

THE COURT: Well, they did manufacture the autoanalyzers.

MS. VORSANGER: Yes, but with respect to the control. It's relevant with respect to the control because it further demonstrates the total control by the individuals of the patent rights and how they could cut out Romney at will, as they in fact did. And I think this is just another little peg in the whole pattern.

THE COURT: Mr. Goldfein?

MR. GOLDFEIN: Your Honor, I invite your attention to paragraph 11 of the Stipulation which, I think, quite clearly shows that the U.S. corporation held the basic patent rights and the autoanalyzers were manufactured under those rights.

THE COURT: So, apparently, there wasn't any written agreement. Go ahead, Ms. Vorsanger.

BY MS. VORSANGER:

Q Now, Technicon Instruments Limited, Mr. Whitehead, was formed approximately when?

A I believe it was either 1955 or '58; I'm not sure which.

Q And you said it manufactured and sold until 1963.

1 in '63, the manufacturing operation for world operation. 2 That's about the sequence. also, had it been a successful corporation? :3 Had Instruments Limited been successful? 5 Yes. 0 6 I --7 Financially, did it make money? Q 8 It made some money, yes. It was not a spectacular A 9 success as compared to our overall --10 But, every year you made money from, let's say, 11 60-61, '62 it made money. 12 A Yes. 13 Was your father active in the business of Limited? 14 Technicon Instruments Limited? 15 What period? A 16 Q In 62-63-64? 17 I guess the word active is too general for me to 18 define. He was based in the United States. He did make 19 trips to England. He was familiar with their operation, 20 certainly. 21 Was he more or less active than you were, sir*? 22 He had different responsibilities. My father was 23 the financial guidance of our company and I more or less 24 assumed the technical and*sales responsibility.

When Ininco was organized, Mr. Whitchead, it sold

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in part, at least, to the customers or it took over the market 1 of Technicon Instruments, Limited; isn't that a fact? 2 No. What happened to the Technicon Instruments market when Ininco was organized? 5 What are you saying Instruments Limited or 6 Instruments? 7 Limited, I'm sorry. 8 Q What happened to the market of Instruments Limited 9 A it kept on being serviced by Instruments Limited. 10 But after Ininco was formed, did Limited continue 11 to sell? 12 Yes, it did. A 13 Did it continue to sell overseas? 0 14 It didn't sell overseas. 15 A It had never sold overseas? 16 Q The overseas sales were very limited to small 17 A sales in the British Commonwealth. It did not sell 18 19 world-wide. Q Mr. Whitehead, I'd like to show you Exhibit 5E 20 which is part of the Stipulation. This is the option 21 agreement entered into between yourself and your father with 5.5 respect to the shares of Intapco. 23 Yes.

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This option agreement -- you had similar agreement

with your father in other corporations, did you not?

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A I'm not sure. This is rather specific.

Q This option agreement provided that in the event of a termination of the relationship with Technicon or a sale of the stock, that your father was entitled to convert his preferred stock into 50 per cent common stock.

MR. GOLDFEIN: I object to the characterization by Counsel of what this agreement refers to. I think if you have a question to ask, ask the question. The witness can read the document.

THE COURT: The agreement will speak for itself.
Rephrase the question, would you please?

MR. GOLDFEIN: Your Monor, before we go further, can I understand what the relevancy of this whole line is?

THE COURT: Ms. Vorsanger?

Mr. Lewis will make an argument that Mr. Weiskopf held common stock of Intapco for one day and that the rest of the period he held preferred stock. The agreement shows that under cortain conditions, the father had assured himself of getting 50 per cent of the proceeds of any sale and that this was contemplated from the beginning and that he, in fact, should be deemed to hold 50 per cent of the common from the beginning and that they had in

several	corporations.

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MR. GOLDFEIN: Thank you.

THE COURT: All right, you may answer. Proceed.

BY MS. VORSANGER:

- Q Would you read paragraph 1 of Exhibit 5E?
- A Would you like me to read it out loud?
- Q No, to yourself, sir.
- A Okay.

Q Now, that agreement, sir, provides that on the happening of certain conditions, one of which is the termination of relationship with the Technicon companies or a sale, that your father was entitled to convert his preferred shares into common shares so that he would have 50 per cent value thereof, as you would have.

- Λ 50 per cent of the appreciation, I think.
- Q Of the total.
- A Right. Go ahead.
- Q Now, that arrangement is similar, that agreement, that provision is similar to other agreements you and your father had with respect to other corporations; is that not a fact?
 - A I don't think so. I don't recall any.
- Q I wonder if Mr. Lewis might wish to stipulate that in view of the fact that we have the estate tax together and he has knowledge of that.

1	THE COURT: Mr. Lewis can speak for himself.
2	MR. LEWIS: Your Honor, I think I would prefer to
3	see the examination go on. I'm not ready to stipulate that.
4	THE COURT: Thank you, Mr. Lewis. Go ahead, Ms.
5	Vorsanger.
6	MS. VORSANGER: I will have to get my file
7	upstairs, Your Honor. I will do it at the end of the
8	examination.
9	THE COURT: All right.
10	BY MS. VORSANGER:
11	Q When Ininco was formed, Mr. Whitehead, did it take
12	over the market of Technicon Instruments Corp., the worldwide
13	market of Technicon Instruments Corp.?
14	A In a major sense, yes.
15	Q Now, you testified that Mr. Carr was your lawyer
16	in England, is that correct?
17	A Yes.
18	Q Was he your tax lawyer in England?
19	A He was our corporation counsel.
20	Q Did you personally have counsel in England?
21	A I don't understand your question.
2.2	Q Was there an attorney that represented your
23	individual interests in England?
24	A Personally?
25	Q Yes.

Now, would you tell me who your U.S. counsel was 1 during this period? 2 I believe it was Mr. Johnson. No, I'm sorry, it :3 was Hr. Lurie .. Mr. Alvin Lurie?. Q Alvin Luire, , cs. fi A Mr. Alvin Lurie is tax counsel, is that correct? 7 Q No, he was corporate counsel. 8 Λ Did you have separate tax attorneys? 9 Q 10 No, we didn't. A Who advised the corporations --11 Q No, wait a minute, I'm sorry, we did. Mr. Johnson 12 13 was tax counsel. And Mr. Lurie, was corporate counsel. 14 And Mr. Lurie was essentially corporate counsel. 15 Q Did you have a personal attorney in the United 16 17 States during this period? 18 No. Both Mr. Johnson and Mr. Lurie would have given 19 20 you personal advice, is that correct? Yes. Well, if I needed it, I suppose. 21 22 Well, would you tell us, on whose advice was 23 Intanco formed? A I don't really recall. It was probably Mr. 24 25 Carr's.

1	Q Mr. Carr advised you as to the formation of a
2	United States corporation?
3	A I think we've been trying to find the reason for
4	Intapco in preparation for this case and the best thing we
5	can come up with is that it was a convenience for my father
6	and myself to a very particular preferred stock, common stock
7	arrangement and U.K. reason to qualify for the OTC.
8	Q You needed an American corporation to qualify for
9	the OTC, is that what you're telling me, Mr. Whitehead?
10	A I know, you sound very incredulous, but I'm telli
11	you that.
12	Q I show you Exhibits 28BB and 29CC which are the
13	minutes of Ininco. I would like you to identify for me, if
14	you would, who Mr. T.J. Fripp was. If you know.
15	A I don't know.
16	Q Mr. T.A. Bushby.
17	A Sorry.
18	Q Mr. Evans?
19	A I do know.
20	Q He was the managing director?
21	A . He was the managing director of Technicon
22	Instruments Limited.
23	Q And you said also, in effect, of Ininco.
24	A I would think so.

Q Now, Hr. Carr is the Carr we have been talking

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1	about, your attorney? _ 079A
2	A Yes.
3	Q Or the corporate attorney. Mr. W.D. Hume.
4	A He was an accountant, a chartered accountant.
5	Q Whom was he associated with or employed by?
6	A Touche, Ross, Bailey and Smart*.
7	Q And they were your accountants, the corporate
8	accountants for Technicon and Ininco.
9	A Corporate auditors, I think.
10	Q Right. And Mr. A.J. Redpath.
11	A Don't know.
12	MR. GOLDFEIN: What Exhibit were you referring to?
13	THE COURT: 28BB.
14	MS. VORSANGER: Now, with respect to Exhibit 15-0
15	which I show you, Mr. Whitehead, who was Mr. Roros?
16	MR. GOLDFEIN: Could you wait a minute until I
17	locate this?
18	MS. VORSANGER: I'm sorry.
19	THE WITNESS: Mr. Roros was associated with
20	Technicon Corporation.
21	BY MS. VORSANGER:
22	Q And Miss Friedman?
23	A I don't know the name.
24	Q How about Miss Heller?
25	A Don't recognize the name either.

I would assume so. I don't know for a fact.

You don't know.

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1	Λ No.
2	Q Now, you testified, Mr. Whitehead, that Ininco was
:3	organized to take advantage of the U.K. tax exemption; is
4	that correct?
5	Λ Yes.
6	Q So that its purpose so that there was no purpose
7	for it when and if that tax exemption was revoked.
8	A Essentially so, yes.
9	Q When did you first learn of the possible revocation
10	of the overseas trading act?
11	A I believe it was in 1965.
12	Q Could you tell us when in '65 you learned about
13	that?
14	A Probably late spring. It might have been earlier.
15	Q And as a consequence of that, you entered into or
16	Mr. Carr entered into the negotiations with Hong Kong Holding
17	A Yes.
18	Q Now, you have testified that you formed Ininco on
19	the advice of Mr. Carr, is that correct
20	Λ Yes.
21	Q Will you tell us exactly what Mr. Carr told you
22	in connection with the organization of Ininco insofar as it
23	was affected by the overseas trading act?
24	MR. GOLDFEIN: Excuse me, Your Honor, I just want
25	to note that Mr. Carr is here to testify, to state what his.

1	advice was and I think that we'll get that on the record and
2	that's the important thing, I think.
3	THE COURT: I'm sure you will but you can answer
4	as best you can recall.
5	THE WITNESS: I certainly can't recall exactly.
6	You wanted what he advised in what connection?
7	BY MS. VORSANGER:
8	Q What he told you about the requirements of the
9	overseas trading act to start with.
10	A He told us that we needed a 50 per cent partner,
11	which was a severe limitation in our mind.
12	Q Is that the only thing he told you?
13	A He told us that we would qualify to effectively
14	shelter the taxes from the sales of our products but not the
15	manufacturing profit. Sales and income, which of course,
16	was the purpose of our doing it.
17	Q To get the tax exemption.
18	A Of course.
19	Q Now, can you tell me approximately how many
20	conversations you had with Mr. Carr dealing with the
21	requirements and effects of the overseas trading act?
22	A No, I can't. I'm sure I discussed it with him on
23	several occasions but I couldn't tell you.
24	Q Who was at these discussions? Who was present at
25	these discussions?

Undoubtedly Mr. Hume and Mr. Evans. 1. Now, when this advice was given to you, was there any mention of possibly United States tax consequences? I wouldn't think so. I would like a more specific answer, Mr. Whitehead Q I can't really recall conversations we had prior That's impossible. If the question was, were we to 1963. thinking -- did we form Ininco* for United States purposes, no. Excuse me, I would like you to answer the questions Q as I ask them, okay. A I'm sorry. I would like to move to strike the last question Q and answer that this witness volunteered, Your Honor. I want to know whether you specifically recall whether there was any discussion, any mention of possible U.S. tax consequences. Not that I recall. A You do not recall any or are you saying there Q were none. MR. GOLDFEIN: Your Monor, I think that the

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question has been answered.

THE COUNT: He answered it. Go ahead, Ms. Vormanger. He answered it, he said he didn't believe there were.

Was the organization of Ininco discussed with 1 your United States counsel? 0 Undoubtedly. :3 Do you recall whether it was discussed with Mr. .1 Lurie or with Mr. Johnson? .5 A I don't recall specifically but certainly Mr. 1; Lurie would have been advised. 7 Did you have any discussions with U.S. Tax counsel 8 as to the U.S. tax consequences, you personally? 9 A Our corporate affairs were handled by Mr. Lurie 10 and undoubtedly I discussed the formation of Ininco with Mr. 11 Lurie. 12 Q Okay. In these discussions, was there any 13 mention of the controlled foreign corporation provisions of 14 the Internal Revenue Code either specifically or in general? 15 I don't recall --16 You don't recall -- * 17 A Any such discussions.* 18 Were you ever present at any discussions held by 19 Mr. Lurie and/or Mr. Johnson with Mr. Carr? 20 Yes. 21 In connection with the organization of Ininco? A Probably, yes. 23 Now, earlier today, Mr. Whitehead, you stated that 24 you were reluctant to give up the voting rights, to give the 25 voting rights to Romney. Yes.

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1	Q What did you were you told, were you advised
2	by Mr. Carr, by Mr. Lurie, by Mr. Johnson, exactly what you
:3	were giving up?
4	A I don't understand the question. We were giving
.5	up 50 per cent of the vcte.
6	Q But what consequence did that have to you. In
7	effect, what were you giving up?
8	A We were giving up control of our sales company.
9	Q Mr. Whitehead, it has been stipulated that Ininco
10	had no written contracts which assured it as a source of
11	supply, of autoanalyzers. Now, you understood, you were aware
12	of this at the time, is that correct?
1:3	A No, I wasn't.
14	Q Now, you have stated just previously that you
15	gave up control. What you gave up was what you meant was
16	50 per cent of the voting rights, isn't that correct?
17	A Which is control in my book.
18	Q Now, what business consequence flowed to you or
19	to Technicon by reason of giving Romney the 50 per cent
20	voting rights?
21	A Did you say what benefits?
22	Q Consequence.
23	A Consequences. Well, the consequences were
24	benefits in that we could take advantage of the overseas
25	trading company act.
CALLES DE OFFICE	

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1	Q But what business consequences other than the
2	benefit; how did it affect your operations? CS6A
3	A I'm sorry, I don't understand the question.
4	Q The fact that Romney had 50 per cent of the
5	voting rights; I want to know, how did that affect your
6	business and your operations?
7	A I guess I don't understand the question. We had a
8	partner for the first time in our business career in 30 years
9	and certainly one's thinking and one's activities would be
10	somewhat different with a partner than without one. My
11	father and I generally agreed, most of the time.
12	Q Now, you ran, the Ininco business was run in
13	accordance with Technicon desires, was it not? Ininco
14	fulfilled a Technicon purpose, did it not?
15	A Ininco was selling the product of the Technicon
16	Instruments Company, Limited.
17	Q Right.
18	A And was selling it to our agents, distributors
19	and offices. Now, in that sense, obviously, this is what
:0	they did.
21	Q Okay. Perhaps I can restate it some other way.
2:2	What business decision, be it expansion or operations, were
23	you prevented from doing by reason of the fact that Romney

A During the period of 1963 to 1966, we were

had 50 per cent of the voting rights?

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THE COURT: Technicon Limited?
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A My understanding was that if they disagreed with
us, they could halt our business activities considerably and
could have the effect of tying up large amounts of capital
that was part of our strategy was to build up to finance our
overseas expansion.
Q Let's go back a little. The Technicon people, you,
your father, had 50 per cent of the voting rights in Inineo,
is that correct?
A Yes.
Q And Romney had 50 per cent.
Λ Yes.
Q Now, supposing you wanted to open a branch office
or expand into a new market or sell another product.
MR. GOLDFEIN: Objection, Your Honor. That
question is
MS. VORSANGER: I haven't finished yet.
MR. GOLDFEIN: Finish your question but it's
hypothetical on its premise and I don't think it's proper
form.
THE COURT: You may rephrase the question.
BY MS. VORSANGER:
Q Assume, Mr. Whitehead, that you wanted to make,

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Q Assume, Mr. Whitehead, that you wanted to make, wanted to sell a new product line.

A Who wanted to sell?

Q Ininco. Me, through Ininco wanted to sell -- he

089A proposed that Ininco expand the sale of its products and that 1 Romney was against this decision and there would be 50 per 2 cent of the votes for and 50 per cent of the vote against. :3 And Mr. Evans was, in effect, running the business. What would happen then? 5 6 MR. GOLDFEIN: Objection, Your Honor. THE COURT: I think you already asked him in the 8 previous -- I think his answer would be the same as his answer to the previous question but you go ahead and answer 9 10 it, Mr. Whitehead. 11 THE WITNESS: What would be the effect? 12 BY MS. VORSANGER: 13 Q What would happen? 14 If Mr. Romney objected? 15 Q Yes. 16 Well, in the extreme, I suppose he could have 17 tied up our business and brought us into Court in saying that 18 he wasn't being treated fairly as an equal partner. I don't 19 know the British law that well but I assume that's the case. 20 Were you advised as to what would happen in that 21 type of a situation? 22 Was I advised? 23 Were you given any advice when you formed Ininco 24 as to what the effects were if that situation developed? 25 We certainly were. Λ

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1	Q And what was the advice given to you at that time?
2	A That we were running a risk.
3	. Q That you were running a risk. But you also know,
4	Mr. Whitehead, that you could stop giving Ininco autoanalyzer
5	is that not a fact?
6	A Yes.
7	Q And if you didn't give Ininco any autoanalyzers,
8	Ininco's business would terminate, isn't that a fact?
9	A Essentially.
10	Q Now, the other question I would like to ask you is
11	were you familiar with the other rights of Rommey other than
12	the voting rights; in other words, let me make that more
13	specifically, what did they share in; what percentage of the
14	profits could they get?
15	A They were given a preferred dividend, 12 and a
16	half per cent.
17	Q Right,. And, were you also aware that if they
18	wished to sell their stock, that they'd have to offer it to
19	you or the corporation at 203t?
20	Λ I wasn't aware of that, no.
21	Q Were you also aware of the fact that on liquida-
22	tion of the corporation, they could only get their cost back?
23	MR. COLDFEIN: Excuse me, Your Honor, that's a
24	legal conclusion in the question and to state that it's a
25	fact I don't think is proper form

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1	THE COURT: Well, it's set out in the articles of
2	association what would happen, it's in one of the Exhibits.
3	MR. GOLDFEIN: Right and I think it's in all of
4	the Exhibits. I think this whole line is referred to in the
5	Exhibits.
6	THE COURT: It's in the Exhibits.
7	MR. GOLDFEIN: The documents will speak for
8	themselves, of course.
9	THE COURT: The articles of association spell it
10	out.
11	MS. VORSANGER: But, Your Honor, I really want to
12	know what this man's knowledge was.
13	THE COURT: All right, he can answer but it only
14	goes as to what his opinion, it doesn't go to the truth of
15	the matter.
16	MS. VORSANGER: Right, I understand that.
17	THE COURT: I'll let him answer.
18	THE WITNESS: I'm sorry, I lost the question.
19	BY MS. VORSANGER:
20	Q Were you aware of the fact that on liquidation,
21	all that Romney would get was its cost?
22	Λ I'm not aware of it at the moment but maybe I was
23	at the time.
21	Q That is my question, whether you were aware at
25	the time.

and your father.

- 1	65
1	A Had a right to
2	Q The balance over the cost
3	A In the event of termination, certainly.
-1	Q Mr. Whitehead, you stated this morning that you
5	needed the tax exemption, you wanted the tax exemption in
6	Ininco to accumulate capital for use in expansion. Now, I
7	would like you to tell me, during the years '63, '64 and '65,
8	to what use was the capital accumulated by Ininco put.
9	A Primarily to finance the receivables of our offices
10	overseas. We started most of these offices in France,
11	Germany, et cetera, with very limited capital and we financed
12	them and brought them to sizeable proportions mainly by
13	delaying the payment of receivables and we used that capital
14	for that purpose.
15	Q Is what you're telling me that you gave terms to
16	your customers?
17	A As to our own offices, Technicon offices.
18	Q Technicon officers?
19	A Offices.
20	Q Offices.
21	A With an E-S not an E-R-S.
22	Q Ckay. These Technicon offices were a part of
23	what corporation, sir?
24	A Technicon.

Q Which Technicon?

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1	A Technicon Corporation Technicon Instruments
2	Corporation, I believe.
:3	Q Whe domestic corporation.
4	A Yes.
5	Q This was done by what form, sir, how did you
6	advance this financing to the corporations, to the offices,
7	to these Technicon Instruments offices?
8	A I don't understand the question. I thought my
9	answer was clear.
10	Q Was it done through Ininco directly, was it done
11	by loans, was it done by distributions?
12	A None of the three.
13	Q Well, how?
14	A The office would order merchandise from Ininco.
15	Ininco would purchase this from the Instruments Company
16	Limited. It would be shipped and the office would pay over
17	extended periods for this. Ininco would pay Instruments, but
18	the Technicon office being formed in, say, Italy, would
19	perhaps take 12 months to pay it which gave them a chance to
20	build their business.
21	Q And did these offices pay Ininco any interest?
22	A I don't believe so.
23	Q Now, these offices, Mr. Whitehead, were not
21	separately incorporated offices, were they?

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Sorry?

Q The offices.

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A There were branch offices and I forget what you call them, they were offices incorporated in each country, of course.

Q But, there came a time, then, Mr. Whitehead, towards 1965 or 1966, the early part of 1966 when this practice was terminated; isn't that correct?

A What practice?

Q Of financing these purposes?

A No.

Q And once Ininco was then liquidated, who -- how was this financing continued?

A To the extent necessary, Ireland did the same thing.

Q So Ireland took over this financing?

A Well, this is not quite correct. Those invoices that Ininco, when it terminated, I believe still had accounts receivable and there was an extended period time over which they were paid out. Now, in the interim, if the orders were shipped, I assume, by Ireland or by America and if it was necessary to grant extended payment terms, it was done.

Q Did Hong Kong Holdings extend this financing arrangement?

A I assume, in the wind-up of Ininco, until they

2 | we agreed that it was adequate and they approved the

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received, they got the monies owed Ininco, they did. There was a period of time, as I recall, from the termination of Ininco until -- the sale of Ininco until its final termination during which period the Hong Kong Company in Ininco received payments from abroad.

Q After Hong Kong Holdings took over Iminco, did it continue -- it did not solicit any orders for the sale of

A I don't believe so.

autoanalyzors, did it?

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Q I'd like to direct your attention to paragraph 23 of the Stipulation, sir. Would you read it? Now, these were the monies from Ininco, were they not, sir?

A This is money paid by Mong Kong Holding for the sale of Intapco.

Q For the sale of Intapco, which held the stock of Ininco.

A Exactly.

Q And this money came from the dividends -- from the assets of Ininco.

A Hong Kong Holdings paid us for the stock in

Intapco and in return for which they got the assets of Ininco

Q Right. And you have no idea where Hong Kong Holdings got the money to pay you?

A They're a very, very big company. They're a billion dollar company so I assume they had the holdings to pay us.

MS. VORSANGER: Two minutes, Your Monor, to see 1 if I've overlooked something? 2 THE COURT: Yes. 3 MS. VORSANGER: I don't have any further questions! 4 THE COURT: Any redirect? 5 6 MR. GOLDFEIN: Just one or two. REDIRECT EXAMINATION 7 BY MR. GOLDFEIN: 8 9 Mr. Whitehead, I know you've been on for quite 10 some time. I'll try to be brief. I know dates seem to not 11 be your thing but with respect to the specific period 1963 12 to 1966, you've testified as to the sales of Ininco to 13 Technicon offices. Am I right in stating that at that period 14 of time, the sales were not only to Technicon-owned offices? 15 You're correct. We were going through an 16 evolutionary period which is why* we needed the capital, 17 going from independent distributors and agents. And we were 18 starting to set up our own offices and we needed this 19 capital for this purpose. 20 During this period of '63 through '66, was there* 21 substantial business done by Ininco through these independent .).) offices? 2:; Yes. Through independent agents. A 24 Through independent agents, yes. 0

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Yes.

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1	Q You also testified and I think this is the proper
2	recollection of the sequence, that with respect to the
3.	formation of Intapco, it was a U.K. reason plus some assistand
4	in terms of a relationship between you and your father; is
5	that right?
6	MS. VORSANGER: I'm sorry, Your Monor, he didn't
7	testify to that at all. He said he couldn't remember why it
8	was formed.
9	MR. GOLDFEIN: Well, what I just wanted to clarify
10	my record that to the extent your testimony relates to your
11	statement of U.K. law, it was based on your understanding and
1.2	advice given by your U.K. lawyer, it was not your analysis of
13	U.K. law.
14	THE WITNESS: Right.
15	MR. GOLDTEIN: Thank you, that's all.
16	THE COURT: Any recross?
17	MS. VORSANGER: Yes.
18	RECROSS EXAMINATION
19	BY MS. VORSANGER:
20	Q I neglected to ask you, I don't know whether I'm
21	pronouncing it correctly, tell me who Mr. van Thuijl* was.
22	A He was the man who operated the Dutch office, the
23	operations of Ininco from Holland.
24	Q Was he also employed by Technicon Instruments
25	Limited or any other Technicon corporation?
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1	A I don't believe so.
2	Q That is at anytime.
3	A Anytime that I know of.
4	MS. VORSANGER: No other questions, Your Henor.
5	THE COURT: You may be excused, Mr. Whitehead.
6	Mr. Goldfein, you have two additional witnesses?
7	MR. GOLDFEIN: Yes.
8	THE COURT: Ms. Vorsanger, do you have any
9	witnesses?
10	MS. VORSANGER: No, Your Honor.
11	THE COURT: Do you estimate that each of the two
12	witnesses, the time will take about the same as Mr. Whitehead
13	MR. GOLDFEIN: I hope it will be shorter.
14	THE COURT: I don't want to start on another witne
15	and get through with the cross and then break for lunch and
16	then come back. I don't think that's fair. Therefore, I'm
17	going to adjourn and take a recess. Do you gentlemen think
18	you can be back at 1:30?
19	MR. GOLDFEIN: Yes, Your Honor.
20	THE COURT: The only reason is, I have another
21	trial at 4:00, possibly, which will keep me here until 7:0
22	this evening. So we'll take a recess until 1:30 p.m.
23	Court is in recess until 1:30 p.m.
24	(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION

THE COURT: Mr. Goldfein, you may call your next witness.

MS. VORSANGER: Your Honor, before we do that, I would like to -- I had thought Mr. Whitehead would still be in the Court Room. I have a couple more questions I want to ask him. I was wondering if Your Honor would help me in making him available for me to ask him those questions. I would make him my witness for the purposes of those questions.

THE COURT: Where is Mr. Whitehead?

MR. GOLDFEIN: Mr. Whitehead I excused after his testimony.

MS. VORSANGER: I did not realize he was going to be excused.

THE COURT: Well, I thought he was going to be excused too, frankly. I had asked you if you had any more questions, I asked you if you had any more questions, you said no, I said the witness may be excused.

MS. VORSANGER: He's in the City, Your Monor. He can't have gone far. I just have to ask him two little questions and I'll make him my witness for that purpose, unless of course, Mr. Goldfein is willing to stipulate to the two questions I wanted to ask him.

THE COURT: Do you know what the two questions are?
MR. GOLDFEIN: I have no idea.

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1	MS. VORSANGER: Well, I asked one of them before.
2	I wanted to know where Mr. James Leslie Evans is now, if he
3	is still connected with Tochnicon and whether Mr. Whitehead
4	and Weiskopf paid tax, income tax on the dividends they
5	recoived.
6	THE COURT: Is this something that you can possibly
7	stipulate to?
8	MR. GOLDFEIN: Yes, I think on the second question
9	I have no knowledge of. I don't know what dividends you're
10	talking about.
11	THE COURT: Let's go off the record.
12	(Whereupon, a discussion was had off the record.)
13	MR. GOLDFEIN: I think it might be a good idea to
14	get rid of this item now instead of
15	THE COURT: All right. Go ahead. Ask your
16	questions.
17	MS. VORSANGER: Is Mr. James Leslie Evans alive
18	now?
19	MR. GOLDFEIN: Yes, Mr. Evans is alive although
20	MS. VORSANGER: Is
21	MR. GOLDFLIN: I want to complete the response. I
22	understand that Mr. Evans works on a limited schedule in that
23	he has heart problems.
24	MS. VORSANGER: But he does work still for
25	Technicon?

1	A Sinc	e 1925.	1C3A
2	Q And	which firm are you affiltat	ted with?
3	A Bags	haw and Co., who practice	in the City of
4	London.		
5	Q Coul	d you please spell Bagshaw	?
6	A B-A-	G-S-H-A-W.	
7	Q And	what is your position in B	agshaw and Company?
8	A I'm	the senior partner.	
9	Q And	how long has Bagshaw and Co	ompany been in
10	existence?		
11	A Sinc	ce about 1860.	•
12	Q Coul	ld you tell us, Mr. Frankli	n, of any director-
13	ships, private	or public companies you ha	ve held during the
14	last 15 or 20	rears?	
15	A Yes	, the private directorships	are rather numerous
16	but the directe	orships of public companies	are Economic Policy
17	Holdings, Limi	ted, of which I have been a	Director and Deputy
18	Chairman since	1961; United Gas Industries	s* Limited to which I was
19	appointed in 1	961. I resigned in March o	of this year. And
20	Unex Investmen	t Trust to which I was appo	inted in 1963 and
21	resigned in 19	68.	
22	Q Wha	t was the business of Unex	Investment Trust
23	during the per	iod 1962 through 1967?	
24	A I b	eg your pardon?	
25	Q Wha	t was the business of Unex	Investment Trust

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during the period 1962, say, to 1967.

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A It was an investment holding company and perhaps I should explain that an investment holding company, at that time, had a special tax status in that it was not required to account for tax on profits arising from realizations of investments, with the idea that those realizations were infrequent and were made purely on investment considerations.

Q Are you familiar with Rommey Finance Company Limited?

A Yes, indeed.

Q Were you a director of that company?

A I was, from its incorporation.

Q And I think the record will show that Romney
Finance Company Limited was established at the end of 1982.
Would you please explain what was the purpose of Romney?

A As I mentioned a moment ago, Unex Investment Trust was excluded from dealing operations. Therefore it caused the formation of this wholly-owned subsidiary, Romney Finance Company, Limited to undertake dealing operations which Unex itself could not undertake.

MS. VORSANGER: I'm sorry, could undertake what kind of operations?

·THE WITNESS: Dealing operations.

BY MR. GOLDFEIN:

Q Did Unex Investment Trust acquire stock in private

investment in Ininco?

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1	A Oh, indeed, yes 100A
2	Q And what was your position in Romney Finance?
3	A I was, of course, a Director from the outset and
4	as the business of the company was operated from my office,
ā	I virtually carried out the function of the Managing Director.
6	Q Could you make some equivalent in U.S. terms as
7	to what the function of a Managing Director is in U.K.?
8	A Yes, I should say it would be analogous to your
9	concept of a President.
10	Q Were you a party to any discussions regarding the
11	investment by Romney in Ininco Limited?
12	A I was.
13	Q Whom did you represent in those discussions?
1.1	A Romney directly and, of course, Unex indirectly,
15	since Unex was the holding company of Romney.
16	Q And with whom did you discuss the investment by
17	Romney in Ininco?
18	A With Mr. Carr, Mr. William Robert Carr in the
19	first instance.
20	Q Did you ever meet with Mr. Whitehead in this
21	connection?
22	A I did. When the negotiations were concluded.
23	Q And can you recall when these discussions regarding
24	the investment by Romney in Ininco took place?
25	A Yes, I would say that, of course it's very difficult

A Yes, in the first instance, they were taking place either in my office or Mr. Carr's office and quite probably over lunch. And the final discussion was held in the Connaught* Motel, London.

And what was discussed at these meetings?

Well, I was approached as representing Romney to consider an investment in Ininco.

Q And can you recall what was considered at your meeting with Mr. Carr and then later?

A Mr. Carr approached me on the basis that he would like me to consider, on behalf of Romney, taking a 50 per cent investment in Ininco, and then, of course, I wanted to be fully informed -- this was the first time I had heard of Ininco -- I wanted to know who the personnel involved were, what the company's business was going to be, what kind of investment we were being invited to make, what kind of security we would got for our investment and, of course, what the dividend yield would be.

Q When you refer to, invited to a 50 per cent

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1	participation I forgot exactly the words what did you
2	mean?
3	Λ 50 per cent was on the basis of voting control.
4	Q And were you offered a preferred stock interest?
5	A Yes.
6	Q And were there any discussions regarding the
7	dividend yield?
8	A There was indeed. This is now ten years and I
9	have the clearest recollection of that discussion.
10	Q Could you please tell us about it?
11	A Yes. The dividend yield offered in the first
12	instance was very much lower than I had expected for a long
13	term investment of this kind. And, of course, I made it quite
14	clear that we were that Rommey would not be interested on
15	the basis of the dividend offered.
16	Q And what dividend yield was finally arrived at?
17	A I can't pretend to speak exactly on the rates after
18	an interim of ten years but I would have said that the figure
19	was of the order of 8 or 9 per cent.
20	Q That was the first offer, is that right?
21	Λ Yes.
22	Q And what was finally arrived at?
23	A 12 and a half per cent.
24	Q How did you consider Rommey would be secure with
25	respect to its investment?

You see. Romney had no capital of its own. Romney

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A Well, in the first instance, of course, we had the 50 per cent voting control and then there were further safeguards, we had the right to, under the articles, to nominate two of the four directors. There was an agreement under which we had the right to sell our shares or to offer our shares, rather, for sale in certain eventualities and there was the final sanction that if that offer for sale was not implemented, then we had the power to force a liquidation of the company.

Q What significance did you give to the 50 per cent of the voting power in Ininco?

A Oh, that was fundamental.

Q Could you explain that, what do you mean?

A Well, without the 50 per cent Rommey's interest could have been prejudiced.

Q Would you have made the investment without that?

A Oh, certainly not.

Q Did you ultimately recommend that Romney make the investment in Ininco?

A Yes, when the final terms were agreed, I reported to my colleagues and gave them full details of the transaction that had been discussed. And, of course, final agreement was subject to the approval of my colleagues on the Rosney Board.

Q Did your colleagues on the Board of Romnoy have and concerns?

A Well, when I explained the nature of the security, we agreed that it was adequate and they approved the transaction going forward.

Q And who was the person authorized to vote the shares held by Romney in Ininco?

A Well, as I was a Director of Romney and functioning as the Managing Director and also a Director of Ininco and I was the obvious person to be authorized to exercise the voting power.

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Q And what steps were taken on behalf of Romney to protect Romney's interests?

A Well, we exercised our right under the articles, of course, to appoint two Directors. I've already indicated the safeguards that were agreed and there was a further safeguard in that checks in excess of 500* pounds should be countersigned by Mr. Carr.

Q And whom were the appointments of Directors that you just referred to?

A Myself and Mr. Goldwater.

Q And at the time of Ininco's formation, what were your expectations regarding the continuation of Ininco's business?

A It was always understood that this was to be a long term operation.

Q Mr. Franklin, could you please tell us whether

MS. VORSANGER: Excuse me, Your Honor, he's not

responding to any question and I object to him volunteering the

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BY MR. GOLDFEIN:

Q Could you explain the reasons why it was important to you that Rommey not waive or otherwise hinder its voting rights in any way?

A Because Romney's interests might thereby be prejudiced.

Q And what was your personal position, Mr. Franklin?

A Well, I must point out that I was acting in a professional capacity in this matter. I was representing clients who are the substantial shareholders in Unex and therefore, of course, I had a duty to them and also to Unex which was a public company.

Q Did you consider that Romney was, at all times, free to vote the shares it held in Ininco in any way which best served Romney's interests?

MS. VORSANGER: Objection, Your Honor, it's a leading question if I ever heard one.

BY MR. GOLDFEIN:

Q Could you please tell us whether or not Rommey was at all times free to vote the shares it held in Ininco?

A Yes.

Q You believe it was?

A I'm quite positive on that point.

Q Thank you. Did you have any participation in the

day to day operations of Ininco?

 Λ No. Neither dld I consider there was any occasion for me to do so.

- Q Did you participate in any discussions relating to the sale of Romney shares in Ininco?
 - A I did.

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- Q With whom did you have any such discussions?
- A Mr. Carr.
 - Q And could you please describe those discussions?
- A Well, he came to see me sometime in 1965 and told me that the Intapco interests wished to sell their shares and they would like Romney also to sell their shares.
 - Q And what was your response, Mr. Franklin?
- Well, I was rather indignant at the time because we had the holding only a matter of some two years whereas, the original intention was that this should be a long term holding which I would say, the sort of period envisioned was not less than ten years.
- Q Did you ask for any consideration, extra consideration in order to sell?
- A Well, after reflecting on the position and having sort of realized that the wish to sell these shares arose from legislation being introduced in 1965 and the basis on which Ininco was set up disappeared. I did eventually come to the conclusion that it was not unreasonable on their part

knowledge, has there ever been any financial or other business relationship between Romney or Unex on the one hand and Mr. Whitehead and his father on the other hand?

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Was, in fact, the premium on the shares that you referred to in the preceding questions, paid as an extra dividend?

It was paid by way of addition to the final dividend that Ininco paid to Ronney.

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1	Q And what is your present relationship to Mr.
2	Whitehead or the Technicon companies?
.3	A No relationship whatever other than an acquaintance
4	resulting from the Romney transaction.
5	MR. GOLDFEIM: Just one moment, Your Honor.
6	THE COURT: Yes.
7	. MR. GOLDFEIN: I have no further questions. You
8	may cross examine.
9	THE COURT: Let me ask one question first. Mr.
10	Franklin, did you consider that Romney had equal voting power
11	in Ininco, Ltd.*
12	THE WITNESS: Yes.
13	THE COURT: Okay, thank you.
14	MS. VORSANGER: Mr. Franklin, Romney Finance
15	Company was a new corporation in 1962, was it not, in
16	November of 1963?
17	MR. GOLDFEIN: Excuse me, Your Honor, that's
18	contrary to the Stipulation. The Stipulation refers it to
19	1962.
. 20	CROSS EXAMINATION
21	BU MS. VORSANGER:
2:2	Q It had been incorporated in November, 1962, is
23	that correct?
21	A Yes.
25	Q Would you tell me what other investments it had

prior to -- up to November of 1963? 1 Well, it had shareholdings. 2 Q In what companies? :3 Various companies. Could you tell me what they were? 5 I'm afraid I can't. This is ten years ago and I 6 can't possibly recall the names. Romney, in the course of 7 its history held, literally, hundreds of shares. 8 Well, I just wanted to know in that one-year period 9 10 but if you don't remember -- how is it that you remember Ininco? 11 I beg your pardon. Λ 12 13 How is it that your remember the Ininco investment? 14 A Ininco was a transaction which was quite different 15 from buying and selling shares in other companies. It was 16 a long term transaction. 17 Q But in 1963, that was, at best, an expectation. 18 I didn't follow you. 19 You said that Ininco was different because it was 20 long term. 21 And, of course, Ininco involved lengthy discussions 2.2 and therefore it would be in my memory. 23 Q Oh, I see. Now, therefore, your other investments 24 did not involve lengthy discussions; is that correct, IIr. 25 Franklin?

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1	A Not completely correct because there were other
2	transactions involving lengthy discussions.
3	Q But in this one year period, '62 to '63?
4	A No, no, the transactions I have in mind occurred
5	subsequently. I can't recall that there was any transaction
6	up to November of 1963 of, other than what one would expect
7	to find in normal dealing operations.
8	Q Right. Now, could you tell me what kind of
9	businesses Romney invested in up until 1963, the end of '63?
10	A They were mostly public, probably entirely public
11	companies and they also undertook underwriting activities.
12	Q I see. Now, these other investments, Mr. Franklin
1:3	did they entail Romney getting 50 per cent of the voting
14	power?
15	A One doesn't get 50 per cent of the voting power in
16	a public company.
17	Q So that therefore, we may reasonably conclude that
18	Ininco was, at least up until the end of 1963, the only
19	company you got 50 per cent of.
20	Λ I think so.
21	Q It may also be reasonably assumed that Rommey did
22	not have any experience in connection with autoanalyzers or
23	that type of scientific equipment.

24 A No.

Q How did you meet Mr. Carr?

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A I've known Mr. Carr for a very long time. His firm and mine were founded round about the same period and we had many mutual clients and we had dealings, professional associations on the affairs of mutual clients.

Q I see. Now, I also see from Exhibit 13M, that the memorandum and articles of association list E.F. Turner and Sons as the solicitors.

A Yes.

Q That is correct, E.F. Turner and Company was the office that Mr. Carr was associated with?

A Yes.

Q Did Mr. Carr or E.F. Turner and Company represent Romney?

A Well, they acted for Romney -- or for Unex rather, Unex caused this company to be incorporated, and E.F. Turner and Sons, of course, acted for Unex.

Q Right. Were they Unex solicitors in 1963?

A On such occasions as we employed solicitors but infrequently, we would employ E. F. Turner and Sons.

Q E. F. Turner and Sons. Would you tell me, Mr. Franklin, when Mr. Carr approached you about the Ininco investment, what he said to you?

A I can tell you the gist of what he said to me but, of course, I can't remember what he said verbatim. He told me that this company was about to be set up and asked me

whether we would consider taking the investment and he indicated some of the terms and, of course, the matter was put forth on a general basis in the first instance and the details were discussed later. Did he tell you why Ininco was being formed? Q Λ Yes. What did he tell you about it? Q 7 He told me it was going to operate as an overseas A trading corporation. 9 And is that all he said in connection with that? 10 Just to the best of your recollection. 11 It was going to be an overseas trading corporation 12 I don't think he needed to say anymore. 13 Q All right. Then let me ask you, did he -- he told 17 you that it was going to be an overseas trading corporation. 15 Now, did he offer you the investment with the voting rights? 16 A Yes, it was indicated that we were being offered 17 50 per cent of the voting rights as part of the transaction 18 19 generally. Right. Now, did he also -- were you familiar with 29 21 the overseas trading provisions? .3.3 In principle, of course. 23 In principle*that they carry the tax exemption 0 24 unyway.

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Yes.

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Q Did you have any discussion as to -- was there 1 any mention made during this discussion with Mr. Carr as to ., U.S. tax problems or consequences? Mone so far as I can recollect. 4 The subject never came up. I should say it is most unlikely. Now, you said also that you had several discussions with Mr. Carr. Now, who else did you discuss this investment 8 with on the Technicon end of it? 9 My recollection is that only Mr. Carr was involved. 70 Only Mr. Carr and then the final --Q 11 The final meeting, Mr. Whitehead was present. Λ 1.7 Just Mr. Whitehead. Q 1:3 I believe there was someone else there but at this 14 distance in time, I'm afraid I can't recall the identity of 15 the third party. Would you recall whether he was an American? 17 I would say yes. 18 Was he an attorney? 1:1 0 I really can't pretend to answer that question. 20 And was there any mention* made of tax consequences 21 at that time, U.S. tax consequences? ... None so far as I can recollect. I believe it has been stipulated that the overseas ::1 trading act was repealed in 1905?

1	MR. GOLDFEIN: I think effective in 1966.
2	THE WITNESS: Would you kindly repeat the question?
3	MS. VORSANGER: Yes. I haven't finished it, sir.
4	THE COURT: Paragraph 18 of the Stipulation at the
5	bottom of page G; is that what you had in mind?
6	MS. VORSANGER: Yes. Now, we have stipulated, Mr.
7	Franklin, that the overseas trading act was abolished by
8	legislation enacted in 1965 to be effective as of April 6,
9	1966. Now, on the assumption that your Parliament acts like
10	our Congress, the proposed repeal of that legislation, to
11	your knowledge, was considered before its enactment.
12	MR. GOLDFEIN: Objection, Your Honor. I don't
13	understand the question and it's hypothetical.
14	MS. VORSANGER: All right, I'll rephrase it. To
15	your knowledge, was the repeal of the overseas trading
16	benefits, discussed in the Parliament and the press, among
17	chartered accountants, before 1965?
18	THE WITNESS: I really am not prepared to answer
19	that. This is eight years ago. There are an awful lot of
20)	waters gone under the bridge since then.
21	BY MS. VORSANCER:
2:2	Q Is that then your answer, that you don't remember?
23	A Yes, I shall have to make that my answer.
24	Q Insofar as Romney was concerned, did you make the

decisions as to what investments were to be made?

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Q No. I would really have only your recollection of

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A Not entirely. On minor matters, I would probably have acted without consultation with my colleagues but on matters which involved sizeable sums of money in relation to Romney, it was a comparatively small company and I would not have acted without my colleagues. In any event, we did have monthly Board meetings.

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Q Well, that leads to another question, sir.

In what range would you consider to be minor and what range would you consider to be major so that you would seek consultation?

A In offers of underwriting, I would have regarded as being entirely within my province and I didn't consider it necessary to obtain the approval of my colleagues to accept an underwriting offer. If some comparatively small share transaction presented itself, I might have acted without — of course I would have obtained ratification of the next Board meeting.

Q I understand that, sir, but -- well, let me ask you the question another way. 25,000 pounds, would you have considered that a major investment?

A In relation to Romney, I would.

Q Now, do you have any idea what Romney's investments at the end of 1963 were?

A I'm sorry, I'm afraid I can't recollect that.

Q No idea at all?

1	A You see, Romney had no capital of its own. Romney
2	being a wholly-owned subsidiary of Unex, which in itself was
3	not a large company, Rommey's capital, of course, was very
4	small.
5	Q Yes, I understand. But, its investments at the
6	end of 1963, would they have ranged around balf a million?
7	MR. GOLDFEIN: Objection, Your Honor. I think the
8	witness has testified several times he doesn't really recall
9	the details of the capital of Romney at that time.
10	THE COURT: I think you've testified far enough.
11	He's answered. He doesn't remember.
12	BY MS. VORSANGER:
13	Q Mr. Franklin, I show you Exhibit 14M.
14	A Yes.
15	Q Which is a copy of the agreement entered into by
16	Romney and Intapco and dealt with the investment in Ininco;
17	is that correct?
18	A Yes.
19	Q At the time, did you execute this on behalf of
20	Romney?
21	A Probably. Yes, that is my signature.
22	Q You were aware then that this agreement provided
23	that if you wished to sell your investment in Ininco, that
24	you had to offer it to
25	A If we followed the procedure laid down in that

agreement.
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be sold at

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it?

Q And you are aware of the fact that it could only be sold at the prescribed price which was par.

A Yes.

Q Cost.

MR. GOLDFEIN: Objection, Your Honor. The agreement speaks for itself.

MS. VORSANGER: Your Honor, I'm trying to get this man's knowledge of it. I think it's important in what he has testified on direct as to what his understanding of the investment was, what consideration he took into account and this is, on cross examination, the question therefore is that it could be sold at cost.

Well, I'll make it easier for you, Mr. Franklin.

You were aware of the provisions of this agreement at the time?

THE WITNESS: Doesn't this agreement talk about the prescribed price?

MS. VORSANGER: Yes.

THE WITNESS: Well, that's not the same as par, is

MS. VORSANGER: Yes, it is.

MR. GOLDFEIN: Could I know what paragraph Counsel for Respondent is referring to?

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1	MS. VORSANGER: The witness is leafing through the
2	entire agreement. I can point him to a paragraph if he wishes
3	. THE WITNESS: As I read the agreement, the price is
4	not par. The price is a prescribed price which is defined in
5	this agreement as I read it very quickly.
6	THE COURT: What page are you looking at?
. 7	THE WITNESS: I'm looking at page 5 I beg your
8	pardon, Your Monor, page 4, clause 5 which provides that the
9	prescribed price of a preferred ordinary share, a secondary
10	ordinary share or a deferred ordinary share shall be the
11	value with respect to such share on the winding up of the OTC
12	which for this purpose means the sum which the OTC shall
13	certify. That is not par.
14	BY MS. VORSANGER:
15	Q Now, what were you entitled to get on the winding
16	up, sir? May I show you the articles of incorporation?
17	I think it's here, sir.
18	A No, that defines the rights in winding up, not on
19	the sale.
20	Q But prescribed price refers to a winding up, sir.
21	Λ I beg your pardon.
22	Q So you have to look at the winding up.
23	A Yes.
24	Q And that is cost, is it not, plus any deficiencies

in dividends?

1	A Under this article, yes. The price would have
2	been par plus any accumulated dividends.
3	Q Right. Now, were you aware of these provisions at
4	the time you made the decision to
5	A Well, I must have been.
6	Q Okay. And you did testify before that you could
7	force a liquidation.
8	A Yes.
9	Q Now, supposing you disagreed with the Weiskopf
10	Mr. Weiskopf and Mr. Whitehead, the Intapco people, what did
11	you understand your remedy to be?
12	MR. GOLDFEIN: Objection, Your Honor. I don't the
13	the form of the question I think it mixes in hypothetical
14	in part and then tries to get back on beam as to a regular
15	question.
16	THE COURT: Rephrase your question.
17	MS. VORSANGER: What was your understanding of
18	what remedy was available to Romney in the event of
19	disagreement with Intapco?
20	THE WITNESS: I think you would have to define the
21	disagreement rather more closely.
22	MS. VORSANGER: Well, supposing a matter came up
23	on the Board, for consideration of the Board of Ininco and
24	Intapco voted one way and Romney voted the other way?
25	MR. GOLDFEIN: Is that your definition?

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1	MS. VORSANGER: I'm asking the questions, Your
2	Monor.
3	MR. COLDFEIN: Is that the question? I don't
4	understand. Is this now the question or is that your
5	definition? I mean, I find this very confusing.
6	MS. VORSANGER: But, Your Honor, it's this man
7	that's got to answer the questions. I'm not asking the
8	questions of Mr. Goldfein.
9	MR. GOLDFEIN: As long as I'm here, Counsel, I'm
10	going to see to it that the questions are going to be properly
11	structured to the witness. I think that that's my
12	responsibility.
13	MS. VORSANGER: I don't wish to quibble with
14	Counsel, Your Honor, but it seems to me if I ask a question
15	and the witness understands it
16	THE COURT: Well, restate the question, please.
17	MS. VORSANGER: Would the reporter read it?
18	(Whereupon, the pending question was read back.)
19	MS. VORSANGER: Supposing a matter came up before
20	the Board and Intapco voted one way and Romney voted the
21	other way, what was your understanding as to what Romney
22	could do?
23	THE WITNESS: I don't think, if I may say so, you
24	can put the question quite like that because Romney might not
25	want to do anything. We could have had a disagreement which

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1	had no effect on Romney's investment or Romney's dividend.
2	THE COURT: In other words, you're saying that the
3	. could do nothing.
4	MS. VORSANGER: They could do nothing.
5	THE WITHESS: Right. That's one course.
6	MS. VORSANGER: But, supposing, then
7	THE WITNESS: If I may put the question to you that
8	I think you're trying to ask me, if you'll allow me to do so
9	with respect.
10	MS. VORSANGER: Certainly.
11	THE WITNESS: You're asking me what I would have
12	done had there been a disagreement which would have affected
13	or might have affected Romney's interest.
14	MS. VORSANGER: Yes.
15	THE COURT: All right, answer that.
16	THE WITNESS: Now, the answer to that is we would
17	have followed the procedure in the agreement which you
18	exhibited a moment ago.
19	MS. VORSANGER: And that procedure was?
. 20	THE WITNESS: That procedure was, we would offer
21	the shares for sale and had the sale been not implemented,
22	then we would have had to consider forcing liquidation.
23	BY MS. VORSANGER:
24	Q Now, at the time you made the decision to invest
25	in Ininco, you contemplated that there would not be any

concorned.

THE WITNESS: I couldn't possibly say what was in my mind in 1963. This was a business transaction in the ordinary course of business and I took such steps to insure that the investment that Rommey was making was safeguarded.

MS. VORSANGER: All right. So you don't know now what was in your mind in '63.

THE WITNESS: Not on the points that you are indicating.

BY MS. VORSANGER:

Q Sir, just so I understand it, a chartered accountant, would that be like a certified public accountant in this country?

A The same.

Q Was this your main occupation in 1963?

A Yes, it was.

Q Were you self-employed then or with the firm; were you with Bagshaw then?

A As a practicing young accountant, one must be selfemployed. Of course, I had -- let's see, in 1963, we had one accountant there.

Q Now, what I would like to ask you, sir, is, in connection with the Board of Ininco, were actual meetings held?

A Occasional meetings, yes.

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1		Q Do you recall attending these meetings now?
2		A I can certainly recall some of these meetings that
3	V	vere held in my office.
4		Q Of the Board of Ininco.
o		A Yes.
6		Q And would you tell me, if you remember, who was
7	7	present at the meetings you remember?
8	8	A I can recall one of the early meetings when Mr.
,	9	Goldwater and Mr. Evans were present.
1	0	Q One of the earlier meetings you recall. Were these
1	1	meetings conducted in a formal manner?
í	2	A . No, most informal manner as most of the directors
]	13	meetings of this size company are.
	14	Q Were you provided with an agenda prior to the
	15	meeting?
	16	A I can recall that there was some document that
	17	needed to be executed, and the reason it was called, because
	18	it required the sanction of but this is a long time ago.
	19	Q Yes. So the only document that you recall at
	20	this time, sir, is something like a contract that had to be
	21	executed.
	22	MR. GOLDFEIN: Excuse me, the witness did not
	23	testify to that. Don't put words in the witness' mouth.
	24	MS. VORSANGER: Your Honor, this is cross
	25	examination. I can ask leading questions on cross examinati

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THE COURT: You can ask leading questions but don't put words in the mouth of the witness. Those are two different things.

BY MS. VORSANGER:

Q Is the document that you recall you executed, do you recall what it might have been?

A Yes. It was a power of attorney.

Q It was a power of attorney. Do you recall at this time any other matters that were taken up with the Board?

A I'm sorry. Not formal matters, rather, not matters which required the formal sanction of the Board meeting.

Q Did you -- my question before was whether you were provided with an agenda of what would be discussed at the meeting prior to the meeting?

A It is most unusual for an agenda to be provided for meetings of private companies.

Q All right. Your answer is that it was unusual and therefore you don't recall an agenda being provided, is that correct?

A Yes.

THE COURT: Were you on the Board of Directors of Ininco?

THE WITNESS: Yes, Your Honor.

MS. VORSANGER: Do you have any recollection of

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1	what matters were discussed at the Board meetings that you			
2	attended?			
3	THE WITNESS: I don't think it would be right to			
4	say that I've got a clear recollection of matters discussed			
5	at Board meetings. I can recall discussions with Mr. Evans			
6	from time to time or the fact that I did have discussions			
7	with Mr. Evans from time to time.			
8	MS. VORSANGER: Other than like a Board meeting.			
9	THE WITHESS: Yes.			
10	BY MS. VORSANGER:			
11	Q Were you provided with financial reports of Ininco			
12	Periodically?			
13	A Mr. Evans, who came to see me from time to time,			
14	always brought me up to date on the financial position, the			
15	bank balance and so on and so forth.			
16	Q Orally?			
17	A Yes.			
18	Q Now, there was another Director on the Ininco			
19	Board who represented the Rommey interests; is that correct?			
. 20	A He was appointed by Romney, yes.			
21	Q That was Mr. Goldwater?			
2:2	A Yes.			
23	Q Was he an employee of Romney or Unex?			
24	A No.			
25	Q Was he an employee of Technicon?			

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1	A Not as far as I know.
2	Q What was his business, do you know?
_3	A I can't answer that with certainty but I had the
4	impression that he was retired.
5	Q Was he on the Board of Romney?
6	A Oh, no.
7	Q Was he on the Board of Unex?
8	A Oh, no.
9	Q Do you know why he was selected by Romney?
10	A I can't recall. I have wracked my brains to
11	remember this but I know that he was suggested to me as a
12	possibility and I recall that he came to see me.
13	Q Do you recall who suggested him to you?
1-	Λ I don't, no.
13	Q I don't recall your answer, sir, but did you say
1	he attended Board meetings that you were at?
1	7 A 1 can remember one Board meeting.
. 1	Q That he was at.
1	A Yes.
;	Q Did he vote at that
	A Maybe it was a formal meeting, I'm not saying that
	But, I can remember there was a meeting which he attended and
	23 at which Mr. Evans was present. It may have been for Evans
	24 to give us a progress report.
	Q Now, did you and Mr. Goldwater discuss how you

1	would vote on any particular matter?
2	A No.
3	Q Prior to 1966, sir, did you have a relationship
4	with Hong Kong, business relationship Hong Kong Heldings,
5	Limited?
6	A Oh, no.
7	Q When did you first become acquainted with Hong Kons
8	Holdings?
9	A I don't think I ever did become acquainted with
10	Hong Kong Holdings except that they bought the Rommey shares.
11	Q That was your only relationship then with Hong
12	Kong Limited?
13	A Yes.
14	Q Now, when did you first hear of the sale and by
15	whom? And from whom, I'm sorry.
16	A Are you asking when I was approached as to whether
17	Romney would be prepared to sell; is that the question?
18	Q No, what I'm asking you is, when did you first
19	hear that the shares in Ininco held by Intapco might be sold?
20	A Oh, that was towards the end of 1965.
21	Q How did you hear about that?
22	A From Mr. Carr.
23	Q Could you tell us what Mr. Carr told you as best
24	as you can remember?
25	A I can only relate what I think must have happened

Director what is the name of that company?

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Q No, I would really have only your recollection of what happened.

A I do make it quite clear that this is my recollection and that is, that he came to see me to explain that the Ininco situation, of course, had been materially affected by the repeal of the OTC legislation and there was no object in Ininco continuing to trade and his clients would like to sell the company and would I cooperate in the sale on behalf of Rommey. That is the gist of it.

Q And did you consent to the sale on behalf of Romney?

A I think at the time I expressed considerable indignation because this was only two years after the investments had been made and it was always understood that it was to be a long term investment.

Q But, you must have realized, Mr. Franklin, at the time, under the agreement, you had with Intapco, those shares had to be offered for sale to Romney first; isn't that correct? May I give you the agreement to refresh your recollection?

A That, I think, is factual.

Q And yet they did not do that.

THE COURT: Off the record a moment.

(Whereupon, a discussion was had off the record.)

THE COURT: You may proceed, Ms. Vorsanger.

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BY MS. VOP SANGER:

Q At the time of this proposed sale, sir, you testified just before the break that you were aware of the fact that under your agreement with Intapco, they should have offered you the shares first.

A I believe that to be the position, yes.

Q I'm sorry, I didn't understand your answer.
You believe that was what?

A That to be the position.

Q Thank you. I'm sorry. But, Mr. Carr came to you instead and said that they wanted to sell to Hong Kong?

A I can't recall whether he said that they wanted to sell to Hong Kong. He said they wanted to sell the company. Who the purchaser was, obviously I was aware of the purchaser eventually but not at that time. I'm not even aware that Mr. Carr had a purchaser in mind at that time.

Q Oh, all right. That is the information I was trying to elicit. And this meeting then, the time that Ir. Carr came to you was approximately when, sir?

A In the latter months of 1965.

Q In the latter months of 1965. And you said you were quite indignant and were you advised at that time that the selling of the autoanalyzers would be conducted through the Ireland corporation?

A Through the Ireland corporation?

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- A No, I was not, no.
- Q Did you inquire as to what would happen to the business of Ininco?

A I really can't answer that question at this distance in time. I don't think I would have been concerned. The only relevant point, it would seem to me, would be that Romney would sell its holding, in Ininco. You must bear in mind that this is a fixed interest, a fixed dividend holding and Romney had no interest in the equity of the company.

Q Right. All you were really interested in was the 12 and a half per cent return and protection of --

A And the capital.

Q And the capital. Now, could you give me an idea what the prevailing dividend rate was in '63-64?

A Well, I think that question, if I may say so, is much too general because dividend rates are related to all sorts of factors such as risks and type of business.

Q I'm sorry. I think your objection is appropriate.

Was the 12 and a half per cent return on your investment
higher than the usual return you could expect to get?

A Yes, it was substantially higher say than on a Government stock at that time.

Q Was it higher, sir, than the yield on Rommey's other investments, up to '63?

I would have said yes.

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So that, actually, insofar as Romney was concerned, you were getting a very good rate of return.

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A Yes. I can't speak for this for certainty but I have it in mind that at the time the bank rate which then got interest rates in the United Kingdom, was 5 per cent and the normal lending rate for a good risk would have been 2 per cent over bank rates so that would have been 7 per cent. So you have to compare that with the 12 and a half per cent.

And this is one of the considerations you had in mind, sir, that led you to make the investment.

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Yes. It is quite, I think, obvious, that unless we had an attractive deal, the investment -- there was no point in the investment. We wanted a bigger return on this investment which was to be long term, than* would be deprived on any other forward investment.

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> Right. But, there came a time, sir, when you did decide to sell the Ininco stock.

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I decided to recommend to my colleagues that they sell, yes.

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Yes, you decided to recommend that. What factors led to that decision?

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The fact that Ininco was no longer able to carry on business as an overseas trade corporation. One recognized the predictment of the Intapco interests.

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But that made no difference to you, sir, did it, 1 whether it carried on business as an overseas trading 2 corporation? Your return was* limited. Yes, but then my colleagues and I saw no reason Λ why we should offer any impediment. I beg your pardon? fi My colleagues on the Romney Board saw no good 7 8 10 11 12 13 you acquiesced in the sale. 14 15 16 17 18 13 the witness on cross examination. THE COURT: You are leading the witness. You're 20 21 being cumulative and let's move on. MS. VORSANGER: It really goes to the heart of •)•) 2.3 Respondent's case. THE COURT: I know exactly what the heart of your 21

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reason why we should -- after all, this agreement was entered into in good faith and the circumstances at the time the request was made to cooperate in the sale of the shares, it was made under circumstances beyond the control of the other people and they saw no reason to be difficult. Q You saw no reason to be difficult. So, basically, MR. GOLDFEIN: Objection, Your Honor, I think that she is leading the vitness, putting words in his mouth. THE COURT: Yes, she is. MS. VORSANGER: But it's perfectly proper to lead

case is. I think you've made your point. I think you've

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1	asked some good questions and got some good answers. Sometimes
2	you can ask too many questions, you know.
3	MS. VORSANGER: I know.
4	BY MS. VGRSANGER:
5	Q When you and the Board of Ronney decided to sell
6	the Ininco shares, were you aware that the autoanalyzers would
7	be sold through another entity?
8	A I should say the answer to that is no. It wasn't
9	my concern. I was really concerned with the Romney investment,
10	not the future of autoanalyzers.
11	Q So, it was not a factor in your decision to sell?
12	A It couldn't have been a factor because it was not
13	within my knowledge.
14	Q Prior to the acquisition of the Ininco shares, were
15	you acquainted with Mr. Weiskopf or Mr. Whitehead?
16	A I had met Mr. Wellkopf but not to the best of my
17	recollection Mr. Whitehead.
18	Q In what connection had you met Mr. Weiskop??
19	A It was in connection with a company in which I was
20	a shareholder.
21	Q Could you be a little bit more specific about that
2:	A I'm afraid I can't at this distance in time.
23	That's long before the Ininco transaction, some years before

Would that be a public company?

the Ininco transaction.

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1	Λ	No, no, no.
2	Q	Was it a company related to Technicon?
3	Α	I can't even recollect that. I honestly can't
4	recall the	circumstances in that company at all.
5	Q	In any event, it was a business
6	Λ	Business transaction, yes.
7	Q	Now, I believe you answered this question but jus
8	to make su	re, was there any prior relationship by Rommoy or
9	Unex with	the Technicon interests?
10	A	No, none whatever.
11	Q	Were any of the Directors of Romney Officers of
12	Ininco?	
13	Α	I think I can say no to that.
14	Q	Were any Romney Directors, either Directors or
15	employees	of Technicon?
16	A	I think I can also say no to that.
17		MS. VORSANGER: I have no further questions.
18		THE COURT: Thank you, Ms. Vorsanger. Mr.
19	Goldfein,	redirect?
20		MR. GOLDFEIN: Yes, just one or two.
21		REDIRECT EXAMINATION
22		BY MR. GOLDFEIN:
23	Q	Mr. Franklin, I know there are a lot of questions
24	asked of	you setting forth a number of hypotheticals. I'd
25	Auga Salan	to classify a few things First of all to your

1	recollection, were there, in fact, any disagreements between -
2	on the Board of Directors?
3	A None.
4	Q And when you testified with respect to if there had
5	been a disagreement, you would have offered your shares and
6	then liquidated or were you testifying as to your understanding
7	of one of your remedies?
8	A My answer to that question was, it depended on the
9	nature of disagreement. It had to be a disagreement which
10	would not have affected the interests of Romney and I could
11	see no reason to pursue any remedies we might have had.
12	Q But, all the documents together, of course,
13	represent all of your remedies.
14	A Exactly. The remedies were always there in case
15	of need.
16	MR. GOLDFEIN: Clerk, please mark this.
17	THE CLERK: Petitioner's Exhibit 33 marked for
18	identification.
19	(Whereupon, the aforementioned document
20	was marked as Petitioner's Exhibit Number
21	38 for the purpose of identification.)
22	BY MR. GOLDFEIN:
23	Q Mr. Franklin, I show you Petitioner's Exhibit 38
24	for identification and I ask you, is this your signature?
25	A This is.

1	Q And to whom is that letter addressed?
2	A Addressed to Mr. Carr.
3	Q And what does that letter relate to?
4	A Well, it concerns the discussions I had rather
5	the discussions Mr. Carr had with me with the original reques
6	to cooperate in the sale of the Romney shares.
1	Q And could you tell us what the date of that letter
8	is?
9	A 22nd of December, 1965.
1.0	MR. GOLDFEIN: I offer Petitioner's Exhibit 38 in
11	evidence.
12	MS. VORSANGER: What is the purpose of the offer?
13	MR. GOLDFEIN: It's to show the negotiations and
14	discussions regarding the sale of Romney's interests in
15	Ininco. This was the background which Mr. Franklin testified
16	to.
17	THE COURT: May I see it please? Ms. Vorsanger,
18	do you have any objection to the admission of this?
19	MS. VORSANGER: Could I finish reading it, Your
20	Honor?
21	THE COURT: Fine.
22	MS. VORSANGER: No objection, Your Honor.
23	THE COURT: All right. Do you wish to offer it in
24	evidence, Mr. Goldfein?
25	MR. GOLDFEIN: Yes, I offer it.

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1	THE COURT: All right, then let the record show
2	that Petitioner's Exhibit 38 has been received in evidence
. 3	(Whereupon, the aforementioned document,
4	heretofore marked as Petitioner's Exhibit
5	Number 38 for the purpose of identification,
6	was received into evidence.)
7	MR. GOLDFEIN: I have no further questions, thank
8	you.
9	THE COURT: Any recross?
10	MS. VORSANGER: Just one minute, Your Honor.
11	No, Your Honor.
12	THE COURT: You may be excused, Mr. Franklin.
13	Mr. Goldfein, you may call your next witness.
14	MR. GOLDFEIN: Before I do, Your Honor, I'd like
15	to settle some additional stipulated Exhibits. I think Ms.
16	Vorsanger wanted to stipulate to Exhibits.
17	MS. VORSANGER: We have stipulated, Your Honor, to
18	all of the minutes of the shareholders and directors of
19	Intapco save two and I would like stipulated the additional
20	two and also stipulated that these two minutes and the ones
21	already appearing in the Stipulation, are all constitute
22	all of the shareholders and directors meetings of
23	THE COURT: And do you wish to
24	MR. GOLDFEIM: Yes, but, Your Honor, I have no
25	real doubt that they are all of the minutes but I would like

Mr. Carr --

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MS. VORSANGER: Right. If there are additional ones -- my purpose is to get them all in, Your Honor.

MR. GOLDFEIN: And the other Exhibit that we would like to stipulate together is the application to the United Kingdom income tax.

THE COURT: All right. How are these Exhibits being marked? Are these to be joint Exhibits or your Exhibits?

MR. GOLDFEIN: I think these should be joint

Exhibits.

THE COURT: Then will the Clerk mark them? We left off, the last joint Exhibit was; of course, 37KK, now we have Petitioner's Exhibit 38. Give them to the Clerk so he can mark them.

MS. VORSANGER: Okay. I will give him the minutes of organization meeting of Intapco, Inc. dated November 24th, 1963 which we would offer as Exhibit 39LL.

THE COURT: All right.

MS. VORSANGER: And the other one is a copy of the special meeting of the Board of Directors of Intapco dated December 19, 1963 and I would offer that as Exhibit 40 MM. And Your Honor, I'm producing originals and we'll make the appropriate motion at the end of trial.

THE COURT: All right, Give them to the clerk so he can mark them.

MR. GOLDFEIN: And, at this time -- I don't know 1 what Exhibit we're up to -- Petitioner's Exhibit 41, I think, 2 is the form number 85/0TC entitled, United Kingdom Income Tax 3 Exemption Claimed by Person Not Resident in the United Kingdom. 4 MS. VORSANGER: The only thing I would like to 5 inquire of Mr. Goldfein, is that the only application there 6 is? 7 MR. GOLDFEIN: The only one I have, yes. And this 8 had to do with -- in one of the Exhibits that was already 9 stipulated, it is -- which are letters from Inland Revenue, 10 there is a reference to this application. So, I thought, to 11 complete the record we ought to have the application. 12 (Whereupon, the aforementioned documents 13 were marked as Joint Exhibits 39LL and 14 40MM and Petitioner's Exhibit Number 41 15 for the purpose of identification and 16 received into evidence.) 17 MS. VORSANGER: Before we call the next witness, 18 I was wondering if we could have a very short recess? 19 THE COURT: Yes. I'll take a five-minute recess. 20 (Whereupon, a short recess was taken.) 21 THE COURT: Er. Goldfein, you may call your next .3.3 23 witness. MS. VORSANGER: Excuse me, Your Honor, just before 24

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that, we have an additional Exhibit.

1	THE COURT: Is this a Joint Exhibit or Respondent
2	MS. VORSANGER: Perhaps I will make it my Exhibit.
3	MR. GOLDFEIN: I'll be happy to join you and make
. 4	it a joint Exhibit.
5	MS. VORSANGER: Okay.
6	THE COURT: That will be Joint Exhibit
7	THE CLERK: 42NN, Your Honor.
8	THE COURT: Joint Exhibit 42NN. And you wish to
9	offer it in evidence?
10	MS. VORSANGER: Yes, Your Honor.
11	THE COURT: All right, we'll let the record show
12	that the parties' Joint Exhibit 42NN has been marked for
13	identification and received into evidence.
14	(Whereupon, the aforementioned document
15	was marked as Joint Exhibit 42NN for the
16	purpose of identification and was
17	received into evidence.)
18	THE COURT: All right, Mr. Goldfein.
19	MR. GOLDFEIN: My rext witness, I would like to
. 20	call, is William Robert Carr.
21	WILLIAM ROBERT CARR
2:	a witness herein, called by the Patitioners, having been firs
2:	duly sworn, was examined and testified as follows:
2	THE CLERK: Be seated and state your name and
2	address for the record, please.

1	THE WITHESS: William Robert Carr, Number 6
2	Barney Gate, Teanesmall Gardens, London SW 7.
3	DIRECT EXAMINATION
4	BY MR. GOLDFEIN:
5	Q Mr. Carr, what is your country of citizenship?
6	A United Kingdom.
7.	Q And are you a resident of that country now?
8	A Yes, I am.
9	Q Mr. Carr, could you tell us your present occupation
10	A I'm a Director of a public company in Great Britain
11	Granada Group Limited. I'm a Director of the Group and I'm
12	also a Director and Managing Director of a number of
13	subsidiaries; Granada Group itself is a company I suppose
14	in dollars, withatumove of about 250 million dollars a year,
15	making profits of 30 to 40 million dollars a year. And I run
16	two of the major subsidiary companies and their international
17	operations.
18	Q Granada Group Limited, is that a listed company?
19	A It's a listed company and two of our subsidiary
20	companies, one a publishing*company and one a rental company
21	are also listed on the stock exchange. We have three listed
22	companies.
23	Q Is that the London Stock Exchange?
24	A Yes, the London Stock Exchange.
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And the companies of which you are the Emmaging

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Director, what is the name of that company?

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A Well, it's called Robinson Pentals* and it's probaby the biggest company in our group with a staff of about four and a half thousand people and a turnover of about 40 million pounds a year.

Q And that is a public --

A That is a public company.

Q Prior to your becoming affiliated with Granada Group Limited, 'ir. Carr, what was your occupation?

A I was a solicitor with the firm E.F. Turner and Sons in the City of London. Rather like Mr. Franklin's firm, a very old, reputable firm in existence more than 100 years and I was the senior, what I would call, commercial partner in the firm.

Q And during what period of time did you practice law?

A Immediately after the war, I lectured law for three years and then I went to the City of London to the firm E.F. Turner and Sons where I practiced law for some 18 years and I've now been out of the law, I think, six to seven years.

Q Pardon?

A I've been out of the law now some* six or seven years.

Q You left the practice of law about 1967, is that about right?

A About right, yes.

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Q And can you tell us, why did you leave the practice of law?

A Quite a number of reasons why I left. I think
the principal reason was that having been* a law lecturer, I*
felt* I knew something about the law once upon a time.

Around about 1967, I found I was mainly occupied in holding
some 20 directorships and was neither* one thing or another and I
sat down and thought one day and I went into business and
gave the whole let up. The law and my other directorships
and started a new life.

Q Thank you. What was your association with Technicon Instruments Company Limited?

A I met Mr. Whitehead, the first witness, through a friend who traveled with him to England by sea. It must have been within a year or six months before the incorporation of Technicon Instruments Company Limited in England. I can't remember the date of that but it must have been the late 50s. Technicon was trying to trade in England but were having very considerable difficulty in getting a Board of Trade license to do so. And his friend recommended me to have a try and I managed to get these licenses and my firm* then acted for the Technicon Instruments Company, thereafter they formed it and we acted for it. As far as I know, E.F. Turner still does act for it.

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1	Q And what is your present relationship with Mr.
2	Whitehead or the Technicon group of companies?
3	A Except for my presence here today, nothing.
4	I don't see them at all.
5	Q Were you a Director of Technicon Instruments
6	Company, Limited?
7	A Yes, I was a Director from, I think, the moment of
8	incorporation up to the time when I left the law, when I gave
9	up all my directorships.
10	Q So that period covered from 1959 or so through
11	A Certainly the dates you're talking, up to late
12	'66.
13	Q And during that period in which you were a Director
1.1	in what activities was Technicon Instruments Limited engaged?
15	A Well, it grew from very little. It started in the
16	basement. If I recollect, it started by assembling parts
17	being brought from America into autoanalyzers, the machine
18	that was described earlier and then started its own
19	manufacture, importing some parts and other parts made up in
20	the U.K., then started its own factory and then decided to
21	really develop very much more, sometime in the early 60s,
3:	particularly in the Commonwealth and European markets. It
23	grew during this period.
24	Q And are you familiar with the circumstances of

the creation of Ininco Limited?

153A 125 Yes, very much so. I believe, looking back, that A 1 the idea probably emanated from myself and I suggested to the 2 Board that one way of helping this increasing business would 3 be to over te through an overseas trade corporation. 4 When you say the Board, are you referring to the 5 0 Board of Limited? 6 I was on no other Technicon Board, I wasn't on the 7 Ininco Board -- so, if I do, it's always Technicon Instruments 8 9 Board.

Q Okay, fine.

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A And they considered the idea and they thought, fair enough and to get on to investigate it and work out a scheme and come back, put it up and that's what happened.

We worked out a scheme. When I say we, I would be talking to not only the group's — that is, Technicon Instrument's own accountant but I'd be talking to other people on the matter at the same time. I wasn't operating in a vacuum.

Q In your consideration of Ininco, and your discussions with the Board, what type of company did you expect the new entity to be, in terms of U.K. structure?

A Well, the difficulty about an OTC at that time --

Q I just wanted to get that. It was going to be an overseas trade corporation.

Λ It was going to be an overseas trade corporation.

The object was to build up more --

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MS. VORSANGER: Objection, Your Honor. I move to strike that part. He's already answered the question.

MR. GOUDFEIN: Well, it missed me.

THE COUNT: It missed me too.

BY MR. GOLDFEIN:

Mr. Carr, how did you expect an overseas trade Q corporation to be of benefit in this circumstance?

Because it would provide more cash resources to Technicon Instruments Company Limited to expand its trade.

Could you please explain to us, Mr. Carr, what is an overseas trade corporation?

An overseas trade corporation had wider implications than the one we're talking about today, Ininco and Technicon Instruments. It wasn't, I believe, designed particularly for that, it was designed more for, say the rubber companies operating in Malaya, other companies operating in India, where they had been established years ago with seats of management in London but it also could be applied to companies in England manufacturing and selling abroad. In other words, it was Government legislation to improve overseas earnings. This is the basis of it and there was no reason why a company such as Technicon should not take advantage, in fact, it had every good reason why it should take advantage of this business being a major exporter And this is why we did it.

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Q And what are the specific requirements of an overseas trading corporation?

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I think there would be four basic requirements under the act.

And I think, in the light of this particular case, there was one other fifth requirement in my opinion, which was more of regulation made under the cct as opposed to a requirement of the act. But, the requirements of the act were really quite clear. It had to be incorporated in England. It had to have its residence in England or the United Kingdom, to give a true description. It had to carry on all its trade abroad at the time and it had to be subject to the tax regulations of the country in which it traded. Now, they were the four basic requirements of the overseas trade corporation. The fifth one that I mentioned is, because it has cropped up and is vital —

MR. GORDON: Objection, Your Honor. The witness is testifying as to his opinion and he has not been qualified as an expert.

THE COURT: Well, he's a lawyer, a solicitor and his business has been to advise people. Not only the parties before the Court but -- have you advised other people on overseas trade corporations, other clients?

THE WITHESS: I did then. Yes, indeed. At that time I might have been regarded as some sort of expert.

THE COURT: I think he's qualified to answer. 1 MR. GOLDFEIN: Before you continue your answer, 2 Mr. Carr -- do I gather that there has been a change in :3 Counsel for the purpose of the cross examination? THE COURT: No, no, no change. 5 MR. GORDON: Yes, there has. 6 THE COURT: I didn't know that. Are you going to cross examine Mr. Carr? 8 MR. GORDON: Yes, I will. 9 THE COURT: I didn't know that. 10 11 BY MR. GOLDFEIM: 12 Do you want a little bit of the last question or 13 the last answer? 14 No, the fifth point was the one that I began to 15 mention, was that clearly, the Government did not allow a 16 manufacturing business in England to filter all of its profits 17 into an overseas trading corporation so that arrangements 18 were made to agree on manufacturing prices and sale prices to 19 an overseas trade corporation and this was done in the case 20 of Technicon and was done by Touche, Ross, Bailey* and Mr. Hume did 21 it on behalf of the Company and the price was fixed. .3.3 Did the Touche *Ross -- that's the accounting firm, chartered accountants? .31 Chartered accountants, auditors of Technicon

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Instruments Company, Limited.

1	Q And they handled all the inland revenue regotiation
2	A Yes.
3	Q And Mr. Hume of Touche, Ross* was the partner inchar
4	Λ Yes.
5	Q And is Mr. hume alive today?
6	A I'm afraid Mr. Hume died, I regret to say, about
7	three years ago.
8	Q . Can you explain how you dealt with these technical
9	requirements of an overscas trade corporation in the case of
10	Ininco?
11	A Well, taking the simple ones first, Mr. Hume dealt
12	with number five because he had the detailed knowledge of the
13	company's accounts and the figures and therefore he could
14	produce the manufacturing costs, talk to the revenue and solve
15	that.
16	Carrying on the trade abroad solved itself because
17	the export business did exist and the agency was set up in
is	Holland with this Mr. van Thuijl who was recommended and he deal
19	with all overseas business. The invoices came to him and he
20	placed the invoice. So, they were quite simple.
21	Starting at number one, the incorporation of the
22	company, that is also a simple matter, to incorporate a
23	company in England but we did have one problem here as to who
24	should own the shares, whether they should be held in England
25	or whether they should be held by Mr. Weiskopf and Mr.

Whitehead. That, I think I can deal with when we come to another point and deal with the two together, if I could. The second point, residence in England, means that it has its central place of management and business. In other words, the Board of Directors meet there and the policy is decided there although the trade isn't carried on there. That also would be tied up with the third and really difficult point was how to get a capital structure which would satisfy the requirements of OTC. And the problem we faced here was, there is also legislation in England, which I believe is similar to that in America, that in England, the precise nature of the legislation is that any company which is controlled by five or fewer persons is subject to a direction for surtax purposes. In other words, to prevent an accumulation of money in a company when it was controlled by five or fewer people and if this happened, then the revenue could make a direction against the company which meant that that income or the profits lying in the company would be apportioned to the shareholders for their tax purposes and they would have to pay*income tax. Well, income tax was ... charged at the source but the company in England took income tax out, handed it to the Covernment and they'd have to pay the surtax. The effect of this, of course, was if a direction was made, then the surplus funds were paid out so the shareholders could pay their surtax because in 1963, I believe

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our total rate* of tax was something of the order of 18 and 6 or 19 the pound. It was running maybe 90 per cent. So it was pretty tough legislation.

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The OTC legislation did not exempt companies from the surtax direction legislation. And this was something which raised an anomoly*under the act because if the company is liable to* a direction for surtax, even though*the tax wasn't payable it threw up a liability for income tax. So it defeated the whole object of an OTC. If you formed a company which was liable for direction for surtax, then you needn't form the OTC at all because you would lose both the benefits of the income tax and the surtax position.

This is exactly the case that would happen in the case of Mr. Whitehead and Mr. Weiskopf holding the* company —well they are because two people were/fewer than five and the answer* would be, the company would be liable* for surtax direction. This was discussed at vast length by myself, Mr. Hume and others as to what we could do about it. And we eventually put up a scheme to Mr. Whitehead and Mr. Weiskopf and we said, either you can have 11 people with equal shareholdings — which was greated with horror I might say. It was turned down absolutely immediately. This was not permissible at all. We suggested the only other method under the act was to use an exemption —

MR. GORDON: Your Monor, excuse me. I'm not too sure whether the vitness, at this time, is going beyond the

original question that was asked. I've somewhat lost sight of the original question.

THE COURT: I think he probably is.

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MR. GOLDFEIM: The original question is, Your Monor, how did you deal with the technical requirements, of an OTC.

THE COURT: Please explain that, go ahead.

The only other method is to bring in THE WITNESS: a public company because / an emption of the particular provisions that the shares are held by a public company quoted on a recognized stock exchange, I think are the words, then the company will not be subject to a direction to surtax. Mr. Hume and myself, being very cautious, then put up a proposition to Weiskopf and Whitehead that, let's form a company and give 51 per cent of the vote to a public company in England. And this they wouldn't accept. I would have been much happier if it had 51 because then the problem, as a lawyer, would have been beyond doubt. 49 would have been useless in my opinion. I think 50 would solve the problem and we settled for that as a basis at the time. If we gave 50 per cent of the votes to a public company, we would probably be all right. All I can say is it turned out to be all right but I was a little doubtful at the time, I may may.

BY MR. GOLDFEIN:

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Q At the time of the formation of Ininco, was there any discussion or question raised regarding the eventual liquidation of Ininco or sale of its shares?

A We were too busy forming or finding ways to form it and the definite intention was that as long as there was a benefit under the OTC regulations, this would go on. There was no suggestion of liquidation.

Q And at that time, 1963, the time of the formation, did you consider that the OTC legislation was a permanent part of the laws of the U.K.?

A Well, I wouldn't say permanent but I thought it was fairly long term. It was a Government provision in order to help the economy. Therefore, there was always a chance of change but certainly it wasn't expected to change as it did.

Q While we're talking about this, Mr. Carr, when in fact, did the public learn of the proposed elimination of the OTC legislation?

A Well, my recollection is that the first we learned about it was when it appeared in the finance bill in 1965, that is, the 6th of April, the finance bill appears and it appeared then. I don't know of any prior newspaper gossip or talk about it.

Q To whom did you speak regarding the outside stock investment in Ininco Limited?

A Well, having settled the proposition with my

clients that we would firm this up. I spoke with several people and eventually -- well, one of them is Mr. Franklin and we came to the arrangement which we've heard about already. But I did speak to others who weren't interested.

Q And what role did you play in the discussions with respect to Romney Investment?

wanted an investment by a public company which would carry 50 per cent of the votes. It would be a security; I think we decided on preferred shares, I'm not quite sure. But, it was going to be a fixed interest security and eventually it was agreed to be a preferred share with a fixed dividend. And I told him who the people were, the type of business and I thought it was a very solid business, a lot of security and would be a good investment.

Q To what extent was your advice regarding the capital structure of Ininco influenced by U.S. tax considerations?

A Not at all.

Q Mr. Carr, can you explain what a deadlock company is?

A Yes. In England deadlock companies are created, not very frequently, but they're created more often than not when there are only two shareholders and usually they are two individuals who believe they're going to be happily married

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but are not prepared to take the risk and neither party can vote against the other and it is absolutely deadlocked. They carry on business, if there is a problem, then that problem remains a problem because neither can solve it. It's achieved by having equal votes of shareholders and equal votes as to directors.

Q I refer to Joint Exhibit 10J and in particular, article 10S. Could you explain what that article is?

A Well, it means that when a Board of Directors -THE COURT: What page is that?

THE WITNESS: It is page 32, Your Honor. Well, the first sentence, I think, must be clear. The Board of Directors may meet. The second, questions are determined by a majority of vote. Then it says, in the case of an equality vote, the Chairman may not have a second casting vote. Is that the part?

MR. GOLDFEIN: Yes.

THE WITNESS: It means that if your four Directors two vote one way and two the other, the Chairman does not have a second vote. In England, the public company quoted on the stock exchange, normally has a provision which enables the Chairman to have a second casting vote. In private companies it varies, depending upon what the parties decide. Attached to Table A of the company's act, which really governs, Table A is a draft set up as part of the association --

considerable expense and errore, expense to the crient.

MR. GORDON: Your Monor, objection. It goes beyond 1 the scope of the question. 2 THE COURT: Yes, objection sustained. 3 MR. GOLDFEIN: Was the provision which permits the 4 Chairman to cast the deciding vote deleted in the case of 5 Ininco? 6 MR. GORDON: Objection, Your Honor. There is no 7 evidence it was ever in as part of the records or the minutes 8 of the corporation, the articles of incorporation of Ininco. 9 I believe the a estion was whether it was deleted. 10 THE WITNESS: I think you're probably right. 11 THE COURT: Wait just a moment. Mr. Goldfein, 12 didn't you state your question wrong? What bothers me, on 13 the back of this page 32, it says in the case of an equality 14 of votes, the Chairman shall not have a second casting vote. 15 I thought you just asked him, did you delete that. 16 MR. GOLDFEIN: Your Honor, I meant -- perhaps I did. 17 18 THE COURT: State it again. 19 MR. GOLDFEIN: I think we can disregard the question. I withdraw the question. Was the effect of having 30 21 article 108 in the articles here, to make Ininco a deadlocked .3.3 company? 23 THE WITNESS: Yes, indeed. BY MR. GOIDFEIM: 34 And, in the case of Ininco, how was the deadlock 2.5 Q

possibilities considered?

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MR. GONDON: Objection, Your Honor, I think the articles of association speak for themselves and they set forth the contingencies and what would occur in the event of deadlock.

THE COURT: Restate your question, Mr. Goldfein.

MR.GOLDFEIN: Yes. In the case of Ininco, were
the possibilities of deadlock considered?

THE WITNESS: Very much so. And they were dealt with in two ways.

MR. GOLDFEIN: How were they dealt with?

THE COURT: Go ahead and answer.

THE WITNESS: In the first place, they were dealt with statutorily as our friend has mentioned. In the second place, they were dealt with in an agreement between the parties some time in November.

MR. GOLDFEIN: When you say statutorily, you are referring to the articles of association?

THE WITNESS: The way you've pointed out at the present moment, yes. That, and of course, on the share of votes which was set up earlier in the statutes, there are equal votes between two classes of shares, but it doesn't say who owns the shares. There was another agreement between the shareholders.

HR. GOLDFEIN: In the same Joint Exhibit 10J, I

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1	refer to article 32 on page 16 and ask you to consider, what
2	is the meaning of that provision?
3	MR. GORDON: Again, Your Honor, I'd like to object
4	I think that the items speak for themselves.
5	THE COURT: The language appears to be clear to me
6.	MR. GOLDFEIN: I think, Your Honor, why I'm going
7	into this inquiry is that on the in the trial memorandum o
8	Respondent, apparently some todo was made of this provision
9	and I'd like to explain Mr. Carr's understanding of this
10	provision and what the effects of this provision really are.
11	THE COURT: Well, the trial memorandum of both
12	parties are not part of this official record whatscever in
13	this case. They're merely for my information and guidance in
1.4	preparing for the trial of the case. They're not a part of
15	the official record whatsoever.
16	MR. GOLDFEIN: I understand that but I would
17	anticipate then that the Government is going to make some
18	point with respect to article 32 and I would like the entire-
19	THE COURT: Overruled. Go ahead. You may answer.
20	That is, if the Government follows the theory it has pointed
21	out in its trial memorandum.
22	MR. GORDON: Your Honor, may I inquire if the
23	Government's position is taken on brief
24	THE COURT: Yes, but he hasn't had a chance he

won't be here on brief. That's too late.

MR. GORDON: But that's argument, is it not?

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THE COURT: I would like to have the witness, while

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he's here, answer. You may answer.

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THE WITNESS: It means the Board of Directors may,

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if a transfer is presented to them with respect to any share

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of the company, in this case, a fully paid share, refuse* to

register that transfer. They can't refuse a transfer of the

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share. And so, two people could transfer a share and one

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would eventually become the trustee or the nominee of the

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other but the share couldn't be registered. This is

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permissible in England but not permissible under a* public

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company in the case of a* share which is not fully paid.

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THE COURT: Thank you.

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MR. GOLDFEIN: Is this common in the case of

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private companies in the United Kingdom?

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MR. GORDON: Objection, Your Honor.

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THE COURT: Objection sustained. I've got the

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information I want.

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MR. GOLDFEIN: In your experience, Mr. Carr, was

the inclusion of this provision common?

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MR. GORDON: Objection, Your Honor.

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MR. GOLDFEIN: Your Honor, I'm asking this witness to tell me what his experience is. That's certainly relevant

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and I'm quite chagrined here that --

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THE COURT: Objection overruled. You may answer,

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THE WITNESS: I just don't bolieve in 20 years I've 2 over seen a set of articles without it. Maybe slightly 3 4 modified but in a private company, I don't believe I've ever 5 scen one without it. MR. GOLDFEIN: Thank you. Can you tell me, Mr. 7 Carr, how were Romney's equal voting rights in the case of 8 Ininco, accomplished? 9 MR. GORDON: Objection, Your Honor. 10 THE COURT: State that question again, will you 11 please, Mr. Goldfein? 12 BY MR. GOLDFEIN: 1:3 In the case of Ininco, how were Romney's equal 14 voting rights accomplished? 15 A First of all, because the votes were attached to 16 the shares and they took up certain shares which carried 50 17 per cent of the votes. 18 Mr. Carr, did you ever ask any of the representatives 19 of Unex or Romney to agree not to vote their shares freely, 20 as they saw fit? 21 A No. To your knowledge, were there any oral or written 2:3 agreements or any other understanding whatsoever that Romney

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would vote their shares in a certain way?

A Not to my knowledge.

1	Q To your knowledge, was there ever any oral or
2	written agreement or understanding that Romney would vote its
3	shares in accordance with the instructions or desires of
4	Whitehead?
5	A No.
6	Q Of Weiskopf?
7	A No.
8	Q Of Technicon Instruments Corp.?
9	A No.
10	Q Technicon Instruments Company, Limited?
11	A No.
12	Q Any other person or organization connected with
13	Technicon?
14	A No.
15	MR. GOLDFEIM: Let the record reflect that no was
16	the response to each of those questions.
17	BY MR. GOLDFEIN:
18	Q What effect did the repeal of the overseas trade
19	corporation legislation have on your advice to Weiskopf and
20	Whitehead regarding Ininco?
21	A Well, the repeal of the legislation, of course,
22	made Ininco no longer a useful vehicle for the purpose,
23	originally intended. The first announcement came in April and
24	1 believe the act will appear on the source
25	about the first of August, I think is the date when it appears

142 To some extent, Ininco had always been an anathema to Whitehead 1 and Weiskopf because of this outside interest. 2 :3 MR. GORDON: Objection, Your Honor, that's a 4 conclusion. to which the witness has no knowledge or has testified that he has no knowledge. MR. GOLDFEIM: I think he's trying to shortcut 7 what did you say to him and what did he say to you and I think the answer is perfectly responsive. 9 THE WITNESS: The answer was, very simply to get 10 rid of Ininco. It no longer had any purpose, it had* outside 11 shareholders, to get rid of it. 12 BY MR. GOLDFEIN: 13 And what was then done with Ininco? 14 Well, having agreed that, I discussed the matter 15 with Hume, the auditors and the others as to the best method

With Hume, the auditors and the others as to the best method of dealing with this. The first question was to get the agreement of Romney on the matter. So I approached Mr. Franklin as to whether he was prepared to dispose of or deal with his holding of Romney because Intapco of New York weren't going to use or Technicon Instruments weren't going to use Ininco again. We didn't wish to have a dormant company and we wished to clear the matter up.

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Q And did you participate at all with respect to the sales of the stock interests in Intapco and the sale of Rouney's interest in Iniaco?

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Well. Hume and I put a proposition to them whereby one of the provisions under the OTC legislation was that in the case of non-residents --

MR. GORDON: Excuse me, Your Honor, for clarification purposes only, is the witness testifying as to what he proposed or what Mr. Hume proposed?

THE WITNESS: What I proposed with discussion with Mr. Hume, as I said. And because one of the provisions under the act was that profits, accumulated profits could be distributed to non-residents in gross. In other words, it could be distributed without payment of U.K. tax which was, at that time, I think, slightly less than 40 per cent income tax. We therefore discussed the methods of getting the money out of the company the best possible way and we put up a suggestion to Intapco that everybody sell their shares to a company in Hong Kong where there is a new tax provision and then the Hong Kong Company would take out a dividend in gross which would mean all the profits of the company accumulated over the years, which would make the company really 40 per cent more valuable than it would be if it was dealt with in England. They agreed to that. Asked me to find a buyer and I went to Wheelock Marden who are probably, cortainly among the top five major companies in Hong Kong and this Hong Kong Holdings was one of their subsidiaries dealing in this matter and they said, provided a number of qualifications were

fulfilled, they were prepared to buy this company provided it showed them a* profit.

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MR. GOLDFEIN: Mr. Carr, what might be the ramifications in the case of a deadlock in Ininco; deadlock in the Board of Directors?

ME. CORDON: Your Honor, again, this is provided for in the minutes and in the articles of incorporation, Your Honor and I think they speak for themselves.

THE COURT: It is in the articles.

MR. GOLDFEIN: I'd like to know specifically the tax consequences that might arise as a result of a deadlock and perhaps a forced liquidation.

THE WITNESS: The answer to that would be that people didn't have to abide by the articles or the agreement. I mean, they could offer their shares; they could ask for a liquidation but they could also be very difficult and do nothing. And if they did nothing, then the company was stuck with all this money in it. So, eventually, it could be very difficult and it could force — for example, Romney might have forced Intapco into the position of having to sell its shares or going into liquidation. If Intapco sold its shares it might have lost the profit on the Hong Kong deal.

MR. GORDON: Objection, Your Honor, this is pure speculation.

IR. GOLDTLIN: I would like to know, in this

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1	connection, Mr. Carr, what would be the effects of the U.K.
2	tax law of a liquidation of an overseas trading corporation?
3	THE WITNESS: More tax. The profits would have
4	borne tax.
5	MR. GOLDFEIN: Thank you. And that would be the
6	U.K. corporate tax of 40 per cent that you referred to before
7	THE WITNESS: Yes, that's right.
-8	MR. GOLDFEIN: Now, there was some implication in
9	Mr. Franklin's testimony and I know you were here, regarding
10	E.F. Turner's representation of Romey. Can you describe
11	your participation in that and E.F. Turner's participation
12	with respect to representing Romney?
13	THE WITNESS: Well, E.F. Turner acted for both
14	Unex and Romney but with companies of that nature with about
15	one transaction a year, maybe two inquiries a year, we were
16	consulted very, very rarely.
17	MR. GOLDFEIN: I have no further questions.
16	THE COURT: Mr. Gordon, cross examination.
19	MR. GORDON: May I have five minutes to regroup
20	my notes?
21	THE COURT: Yes. The Court will take a five-
22	minute recess.
23	(Whereupon, a short recess was taken.)
24	THE COURT: You may continue, Mr. Gordon.
25	MS. VORSANGER: Your Honor, Mr. Gordon is going to

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conduct the cross examination of this witness but I would like to make a statement.

THE COURT: Yes.

MS. VORSANGER: I have had these Weiskopf-Whitchead cases for approximately four years. During that length of time I have met with Petitioner's Counsel, both Petitioners, too many times to remember in an effort to dispose of the case first by settlement and then to agree on a lengthy Stipulation that Your Honor has seen. I might add that the remarks I'm about to make are also applicable to the dealings with the agent insofar as they are reflected in the file that I have and that is, Your Honor, when Mr. Carr, just a few minutes ago mentioned the provisions or the directions for surtax which I understand to be like an accumulated earnings tax case, it was the first time I ever heard such a claim made in connection with this case. This has taken Respondent by surprise. We were very diligent in researching the OTC provisions but not those provisions and we have no way of knowing how they apply and affect this case. In the interest of fairness and in view of the importance of the issue and the magnitude of the deficiency, the Respondent requests that the record be kept open on this point so that we may produce an expert on English law to counter this testimony that we just heard about a few minutes ago. I think this is a matter which lies within the discretion of the Court and is designed

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But there were a number of others. There were also some very

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to service the interest of justice.

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THE COURT: I'm already keeping one case open I heard here. You're bound to bring me back to New York.

MS. VORSANGER: Just for a few days, maybe two weeks, Your Honor. We'll get it ready in short order.

THE COURT: If I keep the case open for you to produce an expert on British surtax and it would be limited solely to that, I would likewise keep it open an additional two weeks for the Petitioner to introduce any rebuttal testimony, solely on that issue for which I'm keeping it of an for you.

MS. VORSANGER: Certainly, Your Honor, that's only fair. You know, insofar as it's related to the OTC.

THE COURT: I understand. All right, you'd like to respond?

MR. GOLDFEIN: Yes, we would like to respond. I think Br. Johnson -- do you want to state something before I get to my --

MR. JOHNSON: I think, Your Honor, this is an unusual request and I think we ought to have a moment to consider it.

THE COURT: By all means consider it. We have kept records open, it is an unusual request. We don't like to do it if we don't have to but there are situations where things develop during the trial that in fairness to both

parties, you have to. Off the record.

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(Whereupon, a discussion was had off the record.)

MR. GOLDFEIN: Your Honor, this has taken me by surprise.

THE COURT: It has taken the Court by surprise.

MR. GOLDFEIN: Quite frankly, Mr. Carr's testimony with respect to this whole area is, as to his understandings of the law at the time and what formed the basis of his advice and why, in fact, Whitehead and Weiskopf and the other partice made the investment as they did, the fact of the law or what the law is, certainly can be briefed by the Government if they think that that is really relevant to the proceeding. My point here is, that what the testimony is really being offered for is the understandings of the parties as to what the law was, why they acted as they did and the basis for the investment. And for that purpose, the evidence is being submitted. To bring on an expert on U.K. law at some later time, I don't know what purpose it would serve and I'd like to know what purpose would be served.

and the particular section it relates to and controlled foreign corporations and et cetera and I won't go into details on the sections; isn't it reasonable that all parties involved on both sides should know the application of various provisions of the law on overseas trading companies and why

should the Respondent be caught by surprise; then maybe they haven't done their homework.

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MR. GOLDFEID: Well, that's perhaps so and I don't want to penalize them, not unduly, for not having done their homework but I want to make it crystal clear --

THE COURT: Mr. Carr, you testified that one of the reasons of the formation of it and explained to us the effect of the surtax provision on overseas trading corporations which was undoubtedly a fact to be considered.

MR. GOLDFEIN: All for the purpose of showing the considerations for the purpose of the investment.

THE COURT: Now, why should we -- just because the Government doesn't know such things existed, why should we penalize everybody because they haven't, in effect, done their homework? Neither Respondent hasn't done their homework.

MR. GOLDFEIN: If that's the case and if they want to -- I'm perfectly willing if they want to brief the point of if they want to bring on an expert with respect to it, I can't really have any terribly strenuous objection to it with the understanding I'm not going to bring back Mr. Carr.

either of these gentlemen. They've come at considerable expense. The Court would not expect that of you. That's far beyond the call of duty. These gentlemen have come here at

478A considerable expense and effort, expense to the client. I am 1 anxious to bring the things to a head. I am reluctant to keep 2 cases open. We do keep them open in exceptional cases. :3 MS. VORSANGER: May I say something, Your Honor. 4 We did research the OTC provisions, Your Honor. We had no --THE COURT: Did you research the effect of the 6 7 surtax provision? 8 MS. VORSANGER: No. I had no idea -- there is no way to get keyed into it. I'm not an expert on --9 10 THE COURT: Except for having knowledge, that's right. 11 MS. VORSANGER: Right. I'm sorry, there was no way 12 I could find it. I worked very hard on the case, Your Honor. 13 14 THE COURT: I'm certain that you did, quite 15

obviously by the excellence of this preparation.

MS. VORSANGER: And the only thing I wanted to say is, first of all, I don't see what purpose is served by springing these surprises on the other party.

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THE COURT: I don't think it's a question of a surprise. On that I cannot agree with you, I'm sorry. He was relating the factors that were considered, certain things were done. There was no surprise.

MS. VORSANGER: Well, in any event, Your Honor, if we treat it, Your Honor, as a question of law that we can research and cover on brief, I think that I will be satisfied

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1	THE COURT: Oh, you can. I would like to have you
2	do that.
3	MS. VORSANGER: All I want is the opportunity to
4	counter* something that came to me as a surprise today.
5	THE COURT: Oh, you may cover it in brief at great
6	length. You can become the world's greatest woman authority
7	on the surtax of overseas trading corporations. Fine, you
8	can brief it.
9	MS. VORSANGER: Well, that's all I'm really
10	interested in.
]]	THE COURT: But, I thought you wanted to keep the
12	record open so you could call a witness.
13	MS. VORSANGER: No, because ordinarily, I can find
14	a question of fact that has to be proved but if Your Honor
15	will accept it as a question of law, that's okay with me.
16	THE COURT: I will. Is that satisfactory to you?
17.	MR. GOLDFEIN: Yes, thank you.
18	THE COURT: All right, you may cross examine, Mr.
19	Gordon.
20	MR. GORDON: Thank you. Your Honor, before I
21	start my cross examination, I would just like to advise the
22	Court that any questions that I ask the witness in reference
23	to Technicon will refer to Technicon Instruments Limited
::1	the British subisidary of Technicon Instruments Corporation

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unless I specify otherwise.

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THE COURT: All right. Thank you. 1 CROSS EXAMINATION 2 BY MR. GORDON: 3 Mr. Carr, when did your association with E.F. Turne begin? 5 I think 1948 and 1949. During your association with E.F. Turner, have you 7 ever appeared with clients of yours before the Inland Revenue 8 Service? 9 10 A No. Q You never have? 11 No. It is not the practice in the U.K. to do so. 12 THE COURT: Pardon me for interrupting. There is 13 no time limit today. You can go as long as you wish because 14 the case that was scheduled at 4:00 has been reset for 3:00 15 o'clock in the afternoon tomorrow. So you don't have to 16 17 worry about time. I'm going strong and I'll stay as long as 18 you wish. 19 BY MR. GORDON: 20 The Inland Revenue Service is comparable to our 21 Internal Revenue Service; is that right? 2.2 A That is right, yes. Q Of the clients of E.F. Turner and Sons, who did 23 represent those clients before the Inland Revenue Service 24 2.5 when necessary?

We would always brief a barrister*. You know, we A 1 have two branches of the profession and there is a tax bar and 2 we would always take a member/the tax bar to plead our case. 3 I would never go. We would prepare a brief as we do in England and go to tax counsel who would take it for us. 5 You were not a member of the tax bar in England? No, I was a solicitor, not a barrister. Only barristers -- do solicitors in England have 8 a comparable tax bar as do barristers in England? No. You would say that a solicitor who is a tax 10 expert is rather on a broader basis than a barrister who is 11 specialized solely in tax. He wouldn't do anything else at 12 all. Solicitors in England cover a much broader area of 13 commercial law plus tax or* maybe trust work plus tax. They 14 specialize more in a branch of tax law and some other branch 15 of law. And it's broken down in that way. 16 And you stated that your specialty was commercial 17 Q 18 law. Commercial law and anything that goes with it, yes. 19 A Does that include tax law? 20 0 That would include tax law, yes. 21 A How long did you know Edwin Weiskopf? .3.3 Q I would say I knew Edwin Weiskopf -- and you'll 2:3 have to work it out for me -- within about six months before 21 the date of incorporation of the Instrument company. So, if 2.5

I | then quartified as a lawyer and then E.F. Turner and Sons and |

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you've got that date, I met him about six months before that company was incorporated. '53, I should think.

Q Until his death.

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incorporation. I didn't meet his father probably for a year after.

Q A year after the incorporation of Ininco?

A Technicon.

Q Oh, Technicon.

A Technicon, right around 1958.

Q You were in the Court Room this morning when Mr. Whitehead stated that you were his solicitor in England in the event he had any personal affairs to be taken care of; is that correct?

A That's right. I never knew*of one that he had except the one he mentioned with reference to his wife. I think the only personal affairs he had in England were his personal tax on small director's fees and they were dealt with just by the group, the company's auditors.

Q And you were also the *solicitor for Technicon?

A Yes.

Q And you were in the Court Room when Mr. Franklin stated that you were the solicitor for Romney.

A Yes.

Q And you were also in the Court Room when Mr. Frank

stated that you were the solicitor for Unex. 1 2 That's right. These statements that these gentlemen made with :3 Q respect to the fact that you represented them in the respective 4 businesses that I've set forth; is that correct? 5 6 Yes, that is correct. 7 Q Mr. Carr, could you please explain to me -- strike 8 that. You were also the solicitor for Ininco, is that not 9 correct? 10 Yes, that would be correct. I paused because I can't remember any work except for the beginning to the end 11 12 of the thing. But, we were, you're quite right. 13 Do you recall Mr. Franklin stating that for 1.4 protection purposes, he sought that Ininco provide that you 15 would cosign any expenditures over and above, I believe, a 16 thousand pounds. 17 500 I think it is. A 18 Ű 500 pounds; is that not correct? 19 That is correct. Λ 20 Q Mr. Carr, could you possibly explain to me what 21 conflict arose in the Ininco relationship, especially between 2.2 Intapco and Romney, where you were representing all the 2:3 interests involved? 24 I can't think of any at the time. 25 In the creation of Ininco, in view of your last 0

184A 156 response, could it be safely said that this was merely an 1 arrangement for purposes of satisfying the needs of CTC? 2 Ininco was the OTC. 3 Right. So it was merely an arrangement, there was no -- excuse me. Strike that and let me rephrase it. It was 5 merely an arrangement to accomplish the qualification of the 6 OTC; is that not correct? 7 What was? A 9 0 The creation of Ininco. 10 Ininco was the OTC. The agreement between Intapco and Romney, was it 11 12 not merely an arrangement whereby Ininco would qualify as an 13 OTC? 14 MR. GOLDFEIN: Objection, Your Honor, what agreement 15 is he talking about? 16 THE COURT: Yes, what agreement is he talking 17 about between Romney and Intapco? That needs some 18 clarification. 19 MR. GORDON: Your Monor, I will withdraw that 20 question. 21 THE COURT: All right. .).) BY MR. GORDON: 23 This morning, Mr. Whitehead stated that you had 24 advised him that you needed an American corporation for 25 purposes of qualifying as an overseas trading corporation; do

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THE COURT: EXHIBIT 251. _ JOSH

you recall that testimony?

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I don't think he said quite that. I think he said that eventually, I think it was Mr. Carr who advised this. Then he said, I suppose it was for that purpose. It wasn't, in fact. The Intapco had no relevance as far as I know to U.K. tax or to the CTC. The decisions which led to having foreign residence was the fact that we considered at the time, as we could get Bank of England consent, that we might as well have a foreign resident because it would mean if we ever got to paying dividends, we could pay the 1 in gross. And this was the reason why we picked foreign residents. After that, I think Intapco was rather like Topsy, it sort of grew for a dozen reasons but not for U.K. tax purposes. I think there were personal reasons. I think we in England would have preferred a company for surtax reasons, I shouldn't say, but perhaps to camoflage things but there was no specific reason for Intapco as far as I was concerned.

Q As a practical matter, Intapco, on its own accord, could have incorporated Ininco and qualified as an OTC; is that correct?

A No. That's absolutely contrary to my earlier evidence how it would be structured* on the basis of avoid* bringing in a company to/ the surtax position.

Q With respect to the surtax position, could you please tell me what section of the Internal Revenue Code of

England you're referring, specifically, the income tax act of 1952?

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A I could make a guess at the surtax. I think it's about 242. But, I'm extinct six or seven years now. Maybe 245, maybe that part of the act. But I think you've got to accept that I'm no longer either a legal or a tax expert after seven years. But I think you would find it round about that area.

MR. GORDON: Your Honor, for the record, Section 245 does speak to surtax. Your Honor, at this time I would like to mark this for identification. Unfortunately, it is from the library of the United States Circuit Court of Appeals and if I may mark it for identification at this point and do it on a separate piece of paper.

THE COURT: All right. The Clerk will mark it.

THE WITNESS: Could I have the question repeated?

You asked me where the surtax provisions appear in the act.

You didn't ask me where they appear in the act with regard to

OTCs because that I don't know offhand but there were other

provisions which gives rise to the problem. That's all I

can say.

MR. GORDON: Right.

THE COURT: Respondent's Exhibit 00.

(Whereupon, the aforementioned document was marked as Respondent's Exhibit 00 for the

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THE COURT: Do you intend later to make copies of certain sections of this act or are you just going to use it?

MR. GORDON: Your Honor, may I go off the record?

THE COURT: Yes.

would be the Income Tax Act of 1952.

in full force and effect?

(Whereupon, a discussion was had off the record.)

MR. GOLDFEIN: Excuse me, is there a particular

section of the code that's being offered for identification?

MR. GORDON: No, I offered the entire code which

THE COURT: The Income Tax Act of 1952, was that

MR. GORDON: Your Honor, my understanding is that this was in full force and effect at this time.

THE COURT: The years involved in this case, I mean.

MR. GORDON: That's correct, Your Honor.

THE WITNESS: I wouldn't guarantee that because the Finance Acts* every year made changes.

THE COURT: This is what concerns me. I don't want to get into evidence on the Income Tax Act of 1952 if there have been a lot of supplements and additions thereto by other acts that we don't have any record of. I want to know how the Act existed during the years involved.

(Whereupon, a discussion was had off the record.)

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Q Mr. Carr, you had stated with respect to the surtax exemption applicable at that time, that companies with five or less stockholders did not qualify for the exemption, is that not correct?

A It would become subject to possible directions for surtax, yes.

Q Is there a provision under the applicable tax law in existence during the years in question which provides that there must be a minimum amount of income before the surtax provisions take effect, a minimum amount of income must have been generated?

A I don't remember. There were quite a number of changes. That could be so but I wouldn't know now. It could have been so.

A There's a -- no, I'm sorry. I just don't remember I'm thinking of something else.

Q Is it not a fact that the surtax -- is it not a fact that the direction for surtax applied to investment income only and not trading income?

A No

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Q Are there any exceptions to the surtax provisions?

A Yes, there were some exceptions. One, as I say, where* were* / shares / held by a public company as a single shareholder.

A Well. I think both of those were after the contract

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But there were a number of others. There were also some very complicated provisions which I wouldn't remember the day after I read them as to how you count five or fewer persons because it brought in relatives, aunts, rephews, nices. It was one of those complicated sections of the whole of the Income Tax Act. Really, I'm in no position at this stage to answer detailed questions from memory. I'll make guesses if you like.

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Q So, therefore, the directions of the surtax are not imposed automatically.

A They were imposed automatically on companies with five or fewer persons unless they fell within certain exemptions and they were laid out quite clearly.

Q And you said one of the exemptions was if the stock was held by a public corporation.

A A public company, for example, was not subject to surtax direction.

Q Was Romney a public company?

A Romney is a subsidiary of a public company which had-the same effect that you looked through a public company the same as you'd look through a private company to see who the shareholders were and the same as you'd look right through, as I believe was done in this case, looking through Romney to the eventual shareholders. That could happen under the Act as well.

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Is that your opinion?

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The statement which I have said is my opinion and the precise question was?

The precise question was whether Romney, not being a public company --

It ranked as a public company for this purpose.

Is there any case law that you recall that sets forth this provision or is it enumerated in the Statute?

It's a fact. If you look through the companies and the holding company of Romney is a public company and it qualified for this purpose. This I can speak of as a fact because these are the facts which I considered in relation to Ininco. So, these I do remember.

. Q But there was, in this consideration, there was no requirement that Romney have 50 per cent of the voting stock of Ininco in order to qualify for the surtax.

As I said in my principal evidence, being a lawyer, I'm ultimately responsible for the problem, I would have preferred Romney to have had 51.

Q Whom were you representing at this juncture when you preferred that Romney have 51 per cent?

A These were discussions with my clients, Weiskopf and Whitehead and the company. I didn't go to Franklin or the other people until we decided what we wanted to do. And I couldn't persuade them to give up 51 per cent. I would have

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1	been much happier and I would have slept much better.
2	Q With Romney?
3	Λ No, with Romney having 51 per cent or some other
4	public company.
5	Q But, you were in a position where you were
6	representing all interests; is it not correct that you were t
7	a position where you were representing allegedly diametricall
8	opposed interests in a corporation.
9	A Well, if you get the timing right, I'll answer
10	the question. The first question was on the 50-51 and my
.1	answer to that is, this was discussed with my clients,
12	Weiskopf and Whitehead who wouldn't accept it. We then
13	formulated the deal they would do and then I went to the other
14	people. Now, that is the second step.
15	Q Who were also your clients, Romney.
16	A Yes, who turned out to be. There were other
17	people but they turned out to be clients.
18	MR. LEWIS: Excuse me, may I be excused?
19	THE COURT: Yes, you may.
20	MR. GORDON: Would the Court want me to wait?
21	THE COURT: No, you can proceed.
22	BY MR. GORDON:
23	O Mr. Carr from your recollection, do you recall

24 whother meetings with the Board of Directors of Ininco were actually held?

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1	A I don't know. I wasn't involved, really, in
2	Ininco. I formed Ininco. I wasn't a Director. I wasn't
3	Secretary. What legal work was done was done by my firm but
4	I wasn't involved directly in Ininco at any time until we
5	came to the stage when CTC legislation was repealed.
6	Q When did it come to your attention that the OTC
7	legislation was to be repealed?
8	A My recollection is it appeared in the Finance Bill
9	after the budget speech on the 5th of April 1965. I can't
10	remember any gossip, either in the financial or the other
11	press that this might happen, that one often gets on certain
12	tax matters discussed beforehand. But, I can't remember it
13	in this case at all.
14	Q You have previously testified that you were engage
15	in the negotiations with the Romney factions for the
16	acquisition of the stock in Ininco; is that not correct?
17 (A That is correct.
18	Q During the course of these negotiations; were
19	there any discussions or any mention of any U.S. tax
. 20	consequences in the incorporation of Ininco?
21	A None at all as far as I can remember.
. 22	Q Were any of these negotiations attended by Mr.
23	Whitehead or Mr. Weiskopf?
24	A The Connaight Hotel moeting, Mr. Whitehead was
25	definitely there, which was really the last meeting. I must

193A 165 have seen Mr. Whitehead on other occasions but a lot of it wan 1 done by telephone, by the agreement being shuttled across the Atlantic back to London during the period and telexes and :3 comments on the clauses. I believe I saw him but not very 4 often. Once, possibly, no more. 5 'Q Was U.S. counsel present at that meeting? 6 I met Mr. Lurie once if that is who you are meaning 1 but I don't know on what occasion. 8 Do you recall whether there was any individual 9 Q other than Mr. Franklin, Mr. Whitehead and yourself at the 10 11 meeting at the hotel?

Mr. Lurie was there. A

Q Mr. Lurie was there?

That's right. A

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Mr. Lurie, to your knowledge, is U.S. counsel for Mr. Whitehead.

That is right. I think he came over really* for the signing and the finalization of the documents and there were a lot of crossing of Ts that day.

During those discussions at the hotel* were potential U.S. tax implications brought up?

No, at that stage, virtually, the matter was finished. I can tell you what happened on that day if you'd like.

Q No, no.

MR. GOLDFEIN: I think it's only fair that the 1 witness be permitted to respond fully so we don't get the 9 wrong implication. I think Counsel is trying to give the 3 wrong implication continuously. MR. GORDON: Your Honor, I think Mr. Franklin 5 testified as to what occurred during that meeting at the hotel on that particular day and we have not sought to 7 impeach* Mr. Franklin's credibility. S THE COURT: All right. 9 BY MR. GORDON: 10 11 12 discussions began? 13 . 14

Do you know whether the matter of the incorporation of Ininco was ever referred to U.S. counsel when the initial

I don't know but it was referred to Weiskopf and Whitehead, of course.

And from there you do not know what occurred.

A No.

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Mr. Carr, did you find the Hong Kong Holdings 0 Company?

> A Yes.

Did you prepare the agreement between Intapco and Q Hong Kong dated February 21st, 1986 which is Exhibit 20T in evidence?

I wouldn't know but I would think that the original draft was propared by my office, yes. I would think so.

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1	Normally we would have a backing sheet with our name on it.
2	I don't recognize it but I would have thought that in the
3	first case it would be prepared by our office.
-1	MR. GORDON: Your Honor, we received a copy of this
5	document, I believe, from Petitioner's counsel so we do not
5	have the original.
7	THE WITNESS: Excuse me, if you want to trace the

THE WITNESS: Excuse me, if you want to trace the document --

MR. GOLDFEIN: I don't understand. This document is stipulated to.

MR. GORDON: Yes, but I would like to know who prepared the document. The witness has testified that he believes it was his firm.

THE WITHESS: I didn't say that. I mean the initial draft was prepared by our firm because eventually Hong Kong Holdings took the matter out of our hands. I believe the agreement was eventually signed in New York and I think we dropped out of it after the very beginning. So, I don't believe we prepared the final document. I think the original document was put up by our office with the basic facts.

MR. GORDON: Fine. Thank you.

BY MR. GORDON:

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Q Do you know who Mr. Redpath is?

A Yes, Mr. Redpath was -- I don't know what date you're speaking but he came to us as an articled* slerk. He

then qualified as a lawyer and then E.F. Turner and Sons and then he left to specialize in patent work. But he was a member of the firm of E.F. Turner and Sons.

Q Mr. Carr, I show you Exhibit 28BB and ask you whom were you representing during that meeting of the Board of Directors?

A Who I was representing?

Q Yes, sir.

A I think we were all present to see that the documentation and things were handed over to Hong Kong Holdings. May I just have a moment to read the minutes?

Q Surely.

A The three top people, Mr. Fripp. Mr. Bushby and Mr. Evans are all members of Wheclock Marden*and Hong Kong Holdings. The bottom three --

Q Excuse me, Mr. Evans is --

A Oh, no, of course, that must have been the Technicon Mr. Evans. The top two, Fripp and Bushby certainly were Hong Kong. I wasn't representing anybody. I was in attendance really, only just to see what happened. It was really the burial rites actually. I was purely in attendance.

Q Did your attendance -- was it precipitated by a request by the Romney faction?

A No, the Hong Kong Holdings people would want us to

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be there.

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Q I show you Exhibit 29CC, minutes of the 21st of March, '66 and ask you if you were just in attendance at that meeting and not representing anyone.

A No, I was representing no one here. I think we were asked to go along, Mr. Hume and myself, as having knowledge of all the facts which they wished as the new directors of the company, in case questions were asked.

MR. GOLDFEIN: I know this isn't orderly procedure Your Honor, but can we just have the record straight? Is that the same response to the prior question? I don't mean to interrupt but I think you're just trying to explain background material.

THE COURT: He happened to give the same answer for both sets of minutes. He was just there. On the first one the Hong Kong people had him there. He was there because he was familiar and he was there to answer any questions.

BY MR. GORDON:

Q Mr. Carr, did you or your office prepare the minutes of the meetings of the Board of Directors of Ininco?

A I didn't. I think my office would have prepared some.

Q Do the United Kingdom corporations ordinarily keep minutes of their meetings?

A It varies with degrees of efficiency and size of

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1	company. Private companies keep very few minutes really.
2	They run their business on an informal basis. Public compania
3	big companies keep very formal minutes.
4	Q Is there any legal requirement that they be kept?
5	. A No.
6	Q If minutes are kept, who would generally sign them
7	A The Chairman of the meeting would sign them at the
8	next following meeting.
9	Q I show you Exhibit 25Y, minutes of a meeting held
10	at 3 St. Helen's Place in London on the 25th of November, '64
11	could you please tell me, do you know whose signature that is
12	on the minutes?
13	A I don't really. I don't know whose signature it
14	was at this time. I'm not sure.
15	MR. GOLDFEIN: Can you show him the original?
16	Maybe it's more clear.
17	BY MR. GORDON:
18	Q I show you can you identify this?
19	A Only by the name, yes.
20	Q And it is?
21	A What it says, I take it.
22	Q The minutes book of Ininco?
23	A Of Ininco, yes.
24	Q Okay. What meeting is that?
25	MS. VORSANGER: This is November 24, 1964.

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1	THE COURT: Exhibit 25Y 199A
2	BY MR. GORDON:
3	Q Mr. Carr, is there a signature there?
4	A There's not one here, there's one here.
5	Q There is a signature on Exhibit 25Y but there is
6	no signature on the minutes of the meeting of the 25th of
7	November, '64?
8	MR. GOLDFEIN: I don't understand this whole line
9	and what you're getting at. We have stipulated the Exhibit.
10	. I thought that this we have the signed copy of the minutes
11	that were sent to us
12	MS. VORSANGER: Mr. Goldfein, you just suggested
13	that we show him the original so he could identify the
14	signature. Now we discover that the copy that is produced to
15	us is signed but the original is not.
16	MR. GOLDFEIN: May we go off the record, please?
17	THE COURT: Yes. Off the record.
18	(Whereupon, a discussion was had off the record.)
19	BY MR. GORDON:
20	Q Mr. Carr, but for the last meeting of Ininco, all
21	the meetings which have been stipulated by the parties in
22	this case, specifically, Exhibit GF, 7G, SH, 21U through
23	29DD inclusive, are minutes of the Board of Directors. There
24	was only one meeting of the stockholders.
25	A Is my name on these? Why should I be asked about

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1	Ininco when we've had Mr. Whitehead and Mr. Franklin in the
2	box all day who were Directors of Ininco? I wasn't even with
3	the company.
4	Q Well, it appears, Mr. Carr, that you were in
5	attendance in all the meetings of Ininco. Now, is that a
6	fact?
7	A No, it's not a fact.
8	Q You're making statements now. Is that a fact?
9	A That is not a fact.
10	Q Mr. Carr was in attendance at the meeting of the
11	29th of November
12	THE COURT: He wasn't in attendance at the one we
13	just had the discussion on, the 25Y.
14	THE WITNESS: I wasn't in attendance on the
15	informal meetings Mr. Franklin said he had with Mr. Goldwater
16	and Mr. Evans.
17	MR. GOLDFEIN: I want the record to

reflect that Counsel is not stating it accurately. He's misstating questions and I want also the record to reflect that what was submitted as originals from which the stipulated documents, copies of which were made, were presented in evidence and Mr. Carr did indicate that he recognized from this original document the signature of Mr.

Evans.

MR. GORDON: He did not say that.

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1 | Revenue tax matters in the United Kingdom?

A It depends what level. Sometimes an accountant does but usually junior members of the bar or as it goes up to the Court of Appeals, senior members of the bar.

- Q Thow are in litigated cases?
- A That's right.

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Q Who took over as the accountant for Hong Kong Holdings; do you know? With respect to Ininco.

A Yes, I know. The Hong Kong Holdings asked

Ross*
Touche,/if they would continue because they knew all the

affairs of Ininco until they had taken over, and paid the

Touche, Ross*

dividend. And, in fact, / applied for the payment of the

dividend to Hong Kong Holdings in gross as exempt trading

income.

Q And to clarify some of the testimony on cross examination with respect to those meetings at which you were in attendance, the latter meetings in '66; why might you have been in attendance?

A He rattled off eight or ten of them. I never had a chance to look at them. If I could look at each one, I could tell you why I was there.

Q I'm talking about --

A I was shown two and I gave you my reasons for the two but the others --

Q Those two, those first two.

Well, I think both of those were after the contract 1 2 of sale to Hong Kong Holdings or after the sale was completed. 3 Wasn't it? 4 Yes. And why might you have been in attendance at 5 thom meetings; that refers to Exhibit 2SBB and 29CC? 6 THE COURT: He answered that. 7 MR. GOLDFEIN: Well, I just want it clarified. 8 THE WITNESS: Basically because Hong Kong Holdings 9 had taken over a company about which they knew very little and 10 they usually asked for myself and Hume to go along in 11 attendance in case there were any points raised. We had no 12 status in Ininco after Hong Kong Holdings bought it. 13 BY MR. GOLDFEIN: 14 Q Were you the solicitor for Hong Kong Holdings? 15 No. A 16 Q No? 17 Never acted for Wheclock Marden as such, or any of their companies*. 18 Now, there was also some questions asked of you in 19 the cross examination regarding your representation of Romney 20 and Whitehead and Technicon. I'd like to know from you, who .21 were you representing in your mind in the discussions 22 regarding the formation of Ininco; which set of shareholders 2:; were you representing? 24 A Weishopf and Thitchead.

Is that clear?

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1	A That's clear, yes, perfectly clear.
2	Q And there was a question asked of you regarding
3	possible conflict and I think you arswered you didn't believe
4	there was.
5	A I don't believe there could have been a conflict
6	in a transaction of that nature.
7	Q And did the Romney people understand that you were
8	representing the Whitchead interests during those discussions
9	A Oh, yes, indeed. I told them perfectly clearly
10	who the company was, how long I had acted for them and what
11	they did.
12	IR. GOLDFEIN: No further questions.
13	THE COURT: Any recross?
14	MR. GORDON: Mo, Your Honor.
15	THE COURT: You may be excused, Mr. Carr. Do you
16	have any further witnesses?
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18	* * *
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DATED 14 Movember 1963

INTAPCO, INC.

AND

ROMNEY FINANCE COMPANY LIMITED

AND

ININCO LIMITED

SHAREHOLDERS AGREEMENT

2001

206A

SAVE as aforesaid, any share of the O.T.C. registered in the name of a party desiring to dispose of the same shall first be offered for sale:-

- (a) in the case of the proposed transfer of a Preferred Ordinary Share, to the registered holders of the Second Preferred Ordinary Shares and of the Deferred Ordinary Shares who may purchase the same under the terms and conditions hereinafter contained; Provided always that the holder or holders of the Deferred Ordinary Shares shall have the
 - first option to purchase all or any number of the shares so offered;
- (b) in the case of the proposed transfer of a Deferred Ordinary Share, to the registered holder or holders of the Preferred Ordinary Shares and of the Second Preferred Ordinary Shares;

 Provided always that the holder or holders of the Second Preferred

 Ordinary Shares shall have the first option to purchase all or any number of the shares so offered;

(c) in the case of the proposed transfer of a Second Preferred Ordinary Share, to the registered holder or holders of the Preferred Ordinary Shares and the Deferred Ordinary Shares; Provided always that the holder or holders of the Deferred Ordinary Shares shall have the first option to purchase all or any number of the shares so offered.

Any such offer for sale is hereinafter referred to as an "offer for sale".

AN offer for sale:-

- (a) shall be made in writing addressed and sent by post from one party to the other at his last known place of business and shall be deemed to have been received 72 hours after the same shall have been posted;
 - (b) shall recite the number of shares to be transferred and the price per share (hereinafter defined and referred to as

"the prescribed price") payable upon acceptance;

holder or holders of the class of shares to whom it is first-offered within 14 days after receipt of such offer and the holder or holders of the other class of shares to whom such offer is made shall then be entitled to accept within 28 days after receipt of such offer as aforesaid the whole or any number of the shares subject to the offer and not already accepted by the holder or holders of the class of shares having the prior option to purchase the same;

to the extent to which it is not accepted if it is not accepted in full or in part within the periods aforesaid and the sale of any share the subject of an offer for sale which is accepted shall be completed within 30 days after acceptance by delivery of a signed transfer and the relative share certificate in exchange for the prescribed price of such share.

- Share, a Second Preferred Ordinary Share or a

 Deferred Ordinary Share shall be the value respectively
 of such share on a winding up of the O.T.C. which for
 this purpose means:
 - the sum which the Auditors for the time. (i) being of the O.T.C. shall certify to be tho appropriate proportion (as hereinafter defined) of the value on the date of posting of the offer for sale (hereinafter referred to as "the transfer date") of that part of the net tangible assets which would have been distributable among the holders of the Preferred Ordinary Shares the Second Preferred Ordinary Shares and the Deferred Ordinary Shares respectively if the net tangible assets had been distributed on the transfer date among the members according to their respective rights in a winding up. In calculating the prescribed price the Auditors shall take into account the D.T.C.'s taxation liabilities and shall make such other ajustments in respect of taxation as in their absolute discretion they consider appropriate;

same proportion as the amount paid up on the Preferred Ordinary Shares, the Second Preferred Ordinary Shares and the Deferred Ordinary Shares and the Deferred Ordinary Shares to the amount of the capital paid up as at the transfer date on all the shares of the class of shares of which it forms a part; (iii) for the purpose of arriving at the value of the net tangible assets at the transfer date the Auditors may obtain and act on such valuations as they think necessary and may adopt such estimate as they think proper of the profits earned by the Company.

or shares is not accepted or is declined in the periods hereinbefore referred to, the party making such offer shall be entitled, at its absolute discretion either

(a) to sell the share or shares subject to
the offer at the prescribed price within
three months after expiration of such
periods, free from the provisions of this
agreement;

(b) within two months after expiration of such periods, to call for and enforce immediate dissolution of the O.T.C. and in that event the holders of the other classes of shares in the capital of the O.T.C. hereby agree to use the voting power (if any) attached to their shares or otherwise concur in the passing of any such resolution.

D.T.C. between the holders of the Preferred Ordinary Shares and the Deferred Ordinary Shares, the parties in their capacity as shareholders and Directors will exercise their absolute endeavours to prevent the resulting occurence of any action or omission/in a deadlock that would impede the normal conduct of the business of the O.T.C. and interfere with the rights of the parties, and will exercise all due diligence to resolve any such impasses empeditionally; and none of the parties will unreasonably prevent by action or failure to act in whatever capacity, the taking of any action by the O.T.C. which is in the ordinary course of its business.

pretation of this Agreement or as to the interpretation of this Agreement or as to the rights, duties
or liabilities of any party hereunder, or as to any act
manner or thing arising out of or under this Agreement,
the same shall be submitted to a single Arbitrator to
be appointed (in default of agreement) by the President
for the time being of the Law Society and this shall be
a submission to arbitration under the provisions of the
Arbitration Act 1950 or any statutory re-enactment,
modification or extension thereof for the time being in
force.

THIRD ING THE

Meeting of Directors held at 66 Queen Street London 2.0.4. on Bridgy the 25th day of Hovember, 1862.

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PRESEUT: Mr. D.c. Whitehead In the Chair Mr. D.a. Isrchant Mr. B.H. Harm

HE ATTENDANCE: Fr. L.J. Evans Mr. Alvin Luris Mr. M.A. Carr Secretar

Incorporation It was reported that the Company had been incorporated on the 28th Hovember 1963 and the Certificate of Incorporation was produced to the Meeting.

Appointment of Directors It was reported that the subscribers had appointed the following persons to be the first Directors of the Company: -

> Mr. E.C. Whitehead Mr. D.A. Mercaent Mr. R.E. Mann

IT MAS RESOLVED that . Mr. L.J. Evans be Secretery. and is hereby appointed Secretary of the Company.

The Cormon Seal, an Seal impression whereof is effixed in the mergin hereof, was profueed at the Reeting and IT WAS RESOLVED that this Seal be adopted as the Seal of the Company.

A specimen share certificate was produced to Share Continients

21-0

the Meeting and IT WAS RESOLVED that the form thereof be approved.

of stratory

A set of statutory books for the Company was produced at the Meeting and IT WAS RESCRIZED that these books be adopted as the books of the Company.

:-- 144075

IT WAS RESOLVED that Messrs. Touche, Ross,

Bailey & Smort of 3 London Wall Buildings, London,

E.C.2. be and they are hereby appointed Auditors

of the Company at a remuneration to be agreed.

La-Intered

of the Company be at 66 Queen Street, London, E.C.L.

Attended

There was produced to the Meeting the front of an Agreement letween Intapco, Inc. of Chauncey, New York, United States of America of the first part Homney Finance Company Limited of 3 St. Helen's Place, London, E.C.3. of the second part and the Company of the third part whereby the parties of the first two parts would agree to regulate their rights as shareholders in the Company, notwithstanding the provisions in the Articles of Association of the Company dealing with the transfer of shares. The Agreement further provided that there should be restrictions on the rights of the proposed shareholders to compete with the business of the Company. The Agreement was approved and IT WAS RESCLIVED that Er. Whitchead to authorised to sign an engrossment thereof on behalf of the Company.

Bocuments

The Secretary was instructed to prepare and file with the Registrar of Companies the following documents:-

- (a) Notice of Situation of Registered Office;
- (b) Particulars of Directors and Secretary.

appointment Letirement Mrector

IT WAS RESOLVED that Mr. B. Franklin be appointed an additional Director of the Company. Mr. Mann then tendered his resignation, which was accepted.

EXHIBIT 22-V

INJECO LIMITED 216A

Minutes of the Second Meeting of Directors held at 65 Queen Street London E.C. 4. c. Friday 29th Movember 1963.

PRESENT: Mr. E.C. Whitehead In Mr. D.A. Marchant Mr. B. Franklin

In the Chair

IN ATTENDANCE: Lr. L.J. Evans Secretary
Mr. Alvin D. Lurie
Mr. W.R. Carr

Starcholders Agreement

pursuant to the authority conferred upon him by the Directors at the first Board Meeting held earlier in the day he had signed on behalf of the Company a Shareholders Agreement between the Company, Intageo, Inc. and Romney Finance Company Limited and that the parties had exchanged contracts.

Applications
for Shares

It was reported that applications for the allotment of chares at par, together with the appropriate subscription monies, had been received from Invapoo, Inc. and Romney Finance Limited pursuant to their having entered into the above-mentioned Shareholders Agreement.

Tronsfer of Shares

- It was reported that two share transfers, each of one Preferred Ordinary Share, had been received from the subscribers as follows:-

1. D.A. Marchant - one share

2. R.H. Mann - one share

Exchange Control

There was produced to the Meeting a letter from the Bank of England under reference I/926E0423 dated 29th Movember 1963 in which the consent of the Bank of England was given to the issue of shares in the same proportions as applications had been received.

Face of Shares

IT WAS RESOLVED that the above-mentioned transfers be passed and registered in the books of the Company and that shares be allotted, and certificates signed and issued under the Seal of the Company in favour of the following

22-V

Romney Finance Company - 250 Preferred Ordinary ____ Shares of £100. each - 175 Second Preferred Ordinary Shares of 2100 each and 250 Deferred Ordinary Shares of 210. Bach. Mr. Whitehead proposed and IT WAS RESOLVED that Mr. Edwin C. Weiskopf be and he is hereby appointed an additional director of the Company as a co-nominee with ir. Whitehead. Mr. Franklin proposed and IT WAS RESOLVED that Mr. Maurice Goldwater be and he is hereby appointed an additional director of the Company as a co-nominee with Mr. Franklin of Romney Finance Company Limited. Mr. Marchant thereupon tendered his resignation as a director, and his resignation was

- anders

appointment and

Directors

Resignation of .

IT WAS RESUL!ED: -

Companies: -

Limited

accepted.

Intapco, Inc.

- "(1) That a banking account or accounts in the name of the Company be opened with First National City Bank, 17 Bruton Street, Berkeley Square, Lordon, W.1.
- (2) That the said Bank is hereby authorised
 - (a) to honour all cheques, bills of exchange and promissory notes expressed to be drawn, signed, accepted or made on behalf of the Company, drawn upon or made poyable with the said bank whether the Company's Account or Accounts is/are in credit or at the discretion of the said Bank, is/are in debit;
 - -(b) to honour any orders to withdraw any or all moneys on any deposit account or accounts of the Company and any or all securities or other properties of the Company in their hands;
 - (c) to act on any instructions with regard to any accounts (whether in credit or overdrawn) or any transactions of the Company;

PROVIDED THAT such documents or instructions are signed by Leslie James Evans in respect of sums not exceeding 1590, and by Leslie James Evans and William Appert Carr in respect of sums exceeding £500.

(3) That as regards cheques, bills of exchange,

" promissory notes and all other documents payable to or to the order of the Company the said Bank is hereby authorised to the said Bank is hereby authorised treat the same as having been duly endorsed by the Company provided they are signed by either Leslie James Evans or William Robert Carr.

Marnate Directors

Mr. Whitshead informed the board of his wish to appoint Mr. Leslie James Evans as an alternate Director in his place in accordance with Article 85, and presented a document formally appointing him. The matter was discussed and IT WAS RESCLVED to approve the appointment.

INTHEO LIMITED

MINUTES of a Meeting of Directors held at 3, St. Helen's Place, Lendon, E.C.3. on 12th December, 1963.

PRESENT:

Mr. B. Franklin Mr. M. Goldwater Mr. L.J. Evans In the Chair

Eccretary and alternate Director to Mr. E.C. Whitehead

IN ATTEMDANCE: Mr. D.A. Marchant

Mr. E.B. Walker

(representing Mesers. E.F. Turner & Sons) Notary Public

Attorney

Two Powers of Attorney were produced at the Keeting as follows:-

- of P.O. Box 606, Ardsley, New York, United

 States of America for the purpose of authorising
 that Company to act as forwarding agents;
 - (b) in favour of Mr. Johannes van Thuiji of 's Gravenhage, Moordeinde 1424, Holland for the
 purpose of enabling Mr. Van Thuijl to establish a place of business for the Company in
 Holland.

and IT WAS RESCLUED that the Company's seal be affixed thereto in the presence of Mr. Walker who was then requested to take the necessary action to ensure that the documents would be available for use in the countries concerned.

ININCO LIMITED

Minutes of a Meeting of Directors held at the Connaught Hotel, Carlos Place, London, W.l. on Wednesday the 10th day of June, 1964.

Present Mr. B. Franklin - In the Chair

Mr. M. Goldwater

In attendance: Mr. L.J. Evans - Secretary and Altera Mr. W.R. Carr - Solicitor

Mr. Evens summarised the financial position of the Company at the end of its first six months trading and reported that sufficient profits had been made to pay an interim dividend to the holders of Preferred and Second Preferred Ordinary Shares at the rate of 12½ p.z. and Deferred Ordinary Shares at the rate of 8½ p.z. Such dividend would absorb £2,752.10.0d. gross which, after deduction of income tax at the standard rate, would amount to a total net dividend of £1692.0.8d.

The was resolved to declare an interim dividend of the abovementioned amount to the holders of the Preferred and Second and folders of the Preferred and Second Preferred Ordinary Shares and the Secretary was instructed to take all necessary steps to remit dividend warrants.

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MINUTES OF A METTING OF DIRECTORS, HALD AT 3 ST. HULDING PLACE, LENGTH, R. C. 3. OH 25th

PRESENT:

Mr. D. Franklin

In the Chair

Mr. M. Colductor

Mr. L. J. Dyans

alternate Direct : to Ir. D. C. Whitehead.

Powers of

Gourte van Thuill of 's Gravenhage, Moordeinde 1421

Holland for the purpose of carrying on a place of business
for the Company in Holland was produced to the Mooting.

The document was examined and approved and IT MAS ROUTE

that Mr. Franklin and Mr. Evans to authorized to affix the
Company's Seal thereto in the presence of a Motory

Public.

THOUCO, LITTLED

22KA

MINUMES OF A DESTING of Directors held on Honday the 14th day of Harch 1966 at 66 Que in Street, London, D.C.4. at 10.30 o'clock in the forenoon

Present:

Fr. E. Franklin - in the Chair

Mr. A. J. Redpath

Mr. L. J. Evans (Secretary and alternate director)

In attendance:

Mr. W. A.: Carr

Mr. W. D. Hume

- 1. It was reported that Fr.A.J.Redpath had been appointed a Director in place of Haurica Goldwater whose signed letter of resignation was produced.
- 2. The Secretary reported that the following payments had been made in the year ended 30th November 1964:-
 - (a) Directors Salaries

		Weiskopi Wnitehead	£7,500 7,500	£15,000
Lan M TII	0.	11177 0 0170 20	* - quantity-franchistored	

(b) Directors Fees

B. Franklin

H. Goldwater	250	2,500
a Oberes		

(c) Service Charge
payable to
Associated Company
15,000

(d) Audit Fee of Messrs.
Touche, Ross, Bailey
& Smart

(e) Dividend of 12% on 250 Preferred Ordinary Shares of £100 each - Gross

£3,125

£250

Less Tax 1,210.18.8. 1,014. 1. 4

IT WAS RESOLVED that such payments be and they are hereby

approved and confirmed

2. The Secretary reports: that the following payments had been made in the year ended 30th November 1965:-

. (a) Directors Salaries

Edwin C. Weiskopf £7,500

7,500

15,000

(b) Directors Fees

H. Goldwater

. B. Franklin

Edwin C. Whitehead

£250

250

500

(c) Dividend of 12% on Preferred Ordinary
Shares of 2100
each - Gress

£3,125

Less Tax 1,289. 1. 3.

1,835.10. 9.

£16,835.13. 9.

IT WAS RESOLVED that such payments be and they are hereby approved and confirmed

3. After considering the undermentioned proposed payments IT WAS RESOLVED that such payments be and they are hereby approved.

(a) Service Charge payable to Associated Company

77,000

(b) Audit Fee of Messrs. Touche, Ross, Bailey & Smart

300

(c) Directors Salaries

Edwin C. Weiskopf

£1,875

· Edwin C. Whitehead.

1,875

3,750

(d) Directors Fees

B. Franklin

71. 4. 8.

· H. Coldwater

. 71. 4. 8.

142. 9. 4.

(e) Dividend on 250
Preferred Ordinary
of fileo each for
the period from
1.12.65 - 14.3.56.
- Gross

£1,790. 3. 2. x

~24A .-

All shareholders agreed that an additional dividend should be paid on the 250 Preferred Ordinary Shares for the period specified.

Michael .

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MILUTES OF A HI WILG of Directors held on Honday the 14th day of March 1966 at 11 o'clock in the forenoon at 55. Queen Street, London, N. 3.4.

Present:

Mr. B. Franklin

in the Chair

Mr. A. J. Redpath

Mr. L. J. Evans

(Secretary and alternate Director)

In attendance

Bir. W. R. Carr

Hr. W. D. Hume.

1. There were produced to the meeting four transfers duly executed and stamped as follows:-

	- Transferor	Transferee	Sheres
a)	Romney Finance Company Ltd.	Hong Kong Holdings	250 Proferred Ordinary Sharer
p)	Intageo Inc. (by its liquidator)	Hong Kong Holdings	250 Deferred Ordinary Shares
c)	Intapco Inc. (by its liquidator)	Hong Kong Holdings	125 Second Pre- ferred Ordinary Shares
a)	Hong Kong Holdings Ltd. (by its Attorney)	Thomas Villiam Fripp	1 Deferred Ordinary Share

AND IT WAS RESOLVED that the said transfers be passed and the names of the transferees entered on the Register

2. There were produced to the meeting the signed resignations from their respective offices as Directors of the Company of the following persons:

. Bernard Franklin Andrew Addpath

and IT WAS RESOLVED that such resignations be and they are hereby accepted with effect from the time of such acceptage

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2004

MINUTES OF A REWING of Directors held on Monday the 14th day of March 1966 at 11.50.0'clock in the forenoon at 18 Finsbury Circus, London, E.C.2.

Present:

Mr. T. J. Fripp - in the Chair

Mr. T.A.Bushby

Mr. L.J. Evans

In attendance Ir. V.R.Carr

Mr. W.D. Hume

Mr. A.J. Redpath

1. It was reported that the following persons had been appointed Directors of the Company in accordance with Article 84(1) and (2) of the Company's Articles of Association.

Thomas William Fripp

Thomas Albert Bushby

Ernest Nash Ensor

Leslie James Evans

2. There were produced to the meeting the signed resignations from their respective office as Directors of the Company of the following persons:

Edwin C. Wnitehead

Edwin C. Weiskopf

and IT WAS RESOLVED that such resignations be and they are hereby accepted with effect from the time of such acceptance.

3.. It was reported to the meeting that there was available for distribution by way of dividend the sum of £500,000

26 M. 1422 M. 1

being exempt trading income of the Company and that authority had been received from the Inspector of Foreign Dividends to pay dividends out of such income without deduction of tax at the net United Kingdom rate, and IT WAS RESOLVED to declare a dividend of the above-mentioned amount to the beneficially entitled holders of the Deferred Ordinary Shares and the Secretary was instructed to take all necessary steps to remit dividend warrants.

15

ments relating to signature of cheques Mr. L.J. Evans was enpowered alone to sign and endorse cheques, drafts and other documents not exceeding £500 in value, but that in the case of cheques exceeding that amount in value his signature required the counter signature of Mr. W.R. Carr. It was proposed that the existing arrangements should continue but that Mr.T.A. Bushby be authorised to countersign cheques as an alternative to Mr.W.R. Carr. IT WAS RESOLVED that he should be so authorised, and that the Company's bankers for giving effect to this authority. IT WAS RESOLVED that he should be so authorised with effect fron to-day's date.

necessary Particulars of change of Directors.

MINUTES OF A MEETING of Directors held on Monday the 21st day of March 1956 at 11.30 o'clock in the forenoon at 18 Finsbury Circus, London E.C.2.

Present:

Mr. T.W. Fripp - in the Chair

Mr. T.A. Bushby

Mr. L.J. Evans

In attendance Mr. W.R. Carr

Mr. W.D. Hume

1. There was produced to the meeting a Profit and Loss Account

for the period 1.12.1965 to 28.2.1966 prepared by Messrs. Touche.

Ross, Bailey & Smart from which it appeared that there was

available for distributuion by way of dividend the sum of

£305,000 being exempt trading income of the Company and it was

reported that authority had been received from the Inspector of

Poreign Dividends to pay dividends out of such income without

deduction of tax at the net United Kingdom rate.

There was produced to the Meeting a Notice of Maiver of dividend on the Second Preferred Ordinary Shares of the Company and IT MAS RESCLVED to declare in favour of the beneficially entitled holders of the Deferred Ordinary Shares a second interin dividend of £305,000

With a view to the proposed liquidation of the Company, there was produced to the meeting for approval a Statement of the Assets and Liabilities of the Company as at the 28th Fabruary 1966. The Statement was considered and approved and IT WAS RESCLUED that the figures contained therein be incorporated into a Declaration of Solvency. The Declaration was then made by Mr. T.M. Fripp, Mr. T.A. Bushby and Mr. L.J. Evans (being a majority of the Directors).

It was decided that Mr. M.J. Findley be appointed Liquidator of the Company and the Decretary was instructed to convene an

Extraordinary General Meeting at short notice for the purpose of proposing resolutions to place the Company in Members voluntary liquidation, to appoint Mr. W.J. Findlay as Liquidator and to authorise him (if it should be necessary) to distribute the Company's assets in specie.

The Secretary was further instructed to secure the filing of the Declaration of Solvency at the Companies Registry prior to the date of the proposed Extraordinary General Meeting.

- 3. The Meeting was reminded that under the existing arrangements for signature of cheques drafts and other documents drawn on the Company's accounts at Bank, in Holland.
 - (a) All cheques drawn on Number 1 Account required the signature of Mr. G. Van Thuijl and the countersignature of either Mr. Whitehead or Mr. Weiskopf or Mr. Evans; and
 - (b) Cheques drawn on Number 2 Account for the equivalent of £50 or less required the sole signature of Mr. G. Van Thuist, and cheques for the equivalent of more than 150 required the signature of Mr. G. Van Thujl and the countersignature of either Mr. Whitehead or Mr. Weiskopf.

IT WAS RESOLVED that the powers of Mr. Whitehead and Mr. Weishop? . to countersign cheques drafts and other documents as above be removed, and that Mr. Thomas Albert Bushby be empowered to countersign in their place and that the requirements for valid signature and countersignature be altered accordingly and notice thereof be given to the Bank

The Secretary reported that there were still in existence the following Powers of Attorney granted by the Company:-

Date

6th December, 1963

25th November, 1964

Attorney

Worth Wir Freight Cyerseas Inc.

December, 1963 Johannes Van Thuije

Geurte Van Thuis

and IT Wis RESOLVED that all such action should forthwith be taken as might be necessary to cancel the said Powers of Attorney, and to give any notices necessary to be given in consequence of such cancellation.

Milling.

BAGSHAW & CO. CHARTERED ACCOUNTANTS 231A 3. H. Holen's Plune, I/K R. BALLANTINE AVENUE 3600. AVENUE 1189. BAGSHAWED, LONDON, ECS. 22nd December, 1965 Dear Mr. Carr, Ininco Limited I have been reflecting on our discussion of yesterday when you informed me that it is the intention to wind up the above When the arrangements for the participation of Romney Finance Company Limited were being discussed some two years ago, it was understood that the minimum term under consideration was 10 years, and had I had any idea that the Company would go into liquidation

within two years, I certainly would not have considered this investment. It was only attractive on a long term basis and the money involved could have been put to better use in the short term.

I got the impression that you mentioned yesterday that the Agreement between the parties made some provision for liquidation in the existing circumstances, but I think I must have misunderstood you as I can find no reference to this in the Agreement of the 29th

In a winding-up the Preferred Ordinary Shareholders are only entitled to receive the nominal value of the shares plus interest accrued to the date of repayment, but taking all the facts into consideration, I really feel that there should be some premium element in addition and I shall be obliged if you would convey this to your clients.

It so happens that Mr. Evens telephoned me this morning in connection with the outstanding dividend and some reference was made to the impending liquidation. I mentioned that I was writing you today on this matter and he asked me to send him a copy of the letter which

Yours sincerely,

at and a collection and description The standard of the

W.R. Carr Esq., Mesors. E.F. Turner & Sons, 66, Queen Street, E.C.4.

c.c. L.J. Evans Esq.

64 T. C. No. 7

UNITED STATES TAX COURT

ESTATE OF EDWIN C. WEISKOPF, Deceased, ANNE K. WEISKOPF and SOLOMON LITT, Executors, and ANNE K. WEISKOPF, Surviving Wife, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

EDWIN C. WHITCHEAD and JOSEPHINE WHITCHEAD, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

*Docket Nos. 1920-69 1934-69. Filed April 17, 1975.

Petitioners were sole shareholders of A, a domestic corporation. A was organized solely for the purpose of holding stock interests in I, a British overseas trading corporation. R, a British corporation, acquired 50 percent of the voting rights of I upon its incorporation. R was entitled, by articles of association and shareholder agreements, to a 12 1/2 present cumulative annual dividend and upon liquidation or sale of stock to a return of its investment. I sold products overseas which were manufactured in the United Kingdom by an affiliate of a domestic corporation wholly owned by petitioners. The stock of A corporation was sold by petitioners, the gain from which was reported as long-term capital gain. Held, I is a controlled foreign corporation and the gain realized upon the sale of A stock is reportable as ordinary gain to the extent of earnings and profits. Sections 957(a) and 1248, I.R.C. 1954. Held further, I was liquidated at the time of the sale of stock in A corporation. Held further, both petitioners are subject to the provisions of section 1248.

James B. Lewis, for the petitioners in docket No. 1920-69. Laurence Goldfein, Mark H. Johnson and Richard A. Levine, for the petitioners in docket No. 1934-69.

Agatha L. Vorsanger and Barry D. Gordon, for the respondent. WILES, Judge: Respondent determined deficiencies in petitioners' income taxes for taxable year ending December 31, 1966, in amounts as follows:

Petitioner

Amount of Deficiency

Estate of Edwin C. Weiskopf

\$481,465.57

Edwin C. and Josephine Whitehead \$454,329.78

Several issues have been settled by the parties. The remaining issues are: (1) Whether, for purposes of applying section 1248, a foreign corporation is a "controlled foreign corporation" as defined in section 957(a); and (2) if determined to be a controlled foreign corporation, whether respondent's computations under section 1248 are correct.

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly.

Petitioners in docket No. 1920-69 are Anne K. Weiskopf and Solomon Litt, the duly qualified and acting executors of the estate of Edwin C. Weiskopf (hereinafter referred to as

All statutory references are to the Internal Revenue Code of 1954, as in effect during the year in issue, unless otherwise indicated.

Weiskopf), who died a resident of New York, New York on February 7, 1968 and Anne K. Weiskopf, Weiskopf's surviving spouse. The legal residence of all such petitioners at the time of the filing of the petition was New York, New York. Weiskopf filed a joint Federal income tax return for the calendar year 1966 with the district director of internal revenue, Manhattan, New York.

Petitioners in docket No. 1934-69 are Edwin C. Whitehead (hereinafter referred to as Whitehead) and Josephine Whitehead, husband and wife, who were legal residents of Rye, New York when the petition was filed. They filed a joint Federal income tax return for the calendar year 1966 with the district director of internal revenue, Manhattan, New York. Whitehead was the son of Weiskopf.

Technicon Instruments Corporation (hereinafter referred to as Technicon) was incorporated in the State of New York and was wholly owned by Whitehead and Weiskopf. During the years 1963 through 1966, Whitehead was the president of Technicon and Weiskopf was chairman of the board of directors. Technicon's primary business was the manufacture and sale of scientific instruments, the most important of which was the "AutoAnalyzer" which Technicon began manufacturing and distributing in 1957. Technicon acquired the patent rights to the AutoAnalyzer in 1957 and owned all such rights through all periods relevant to

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this case. Prior to 1963, Technicon manufactured AutoAnalyzers that were sold in the world market, except the United Kingdom and some Commonwealth countries.

Technicon Instruments Company, Limited (hereinafter referred to as Limited), was a wholly owned subsidiary of Technicon and was organized under the laws of the United Kingdom in the late 1950's. Limited's business initially consisted of assembling AutoAnalyzers from parts made in the United States by Technicon for sale in the United Kingdom. Subsequently it started its own manufacturing and selling operations in the United Kingdom. In or about 1963, Technicon expanded the manufacturing capacity of Limited so as to enable it to supply AutoAnalyzers to the world market outside of the United States. During the period 1963 through 1966 the directors of Limited were:

Edwin C. Weiskopf Edwin C. Whitehead William Robert Carr Leslie James Evans

Leslie James Evans (hereinafter referred to as Evans) was the operating head of Limited.

Romney Finance Company, Limited (hereinafter referred to as Romney) was a corporation organized under the laws of the United Kingdom on November 28, 1962. At all times relevant to this proceeding, all of the outstanding shares of Romney were owned by Unex Investment Trust Limited (hereinafter referred to

Kingdom. Unex was a British "investment holding company" engaged in the business of investing in the shares of publicly traded securities. It was a publicly held company. Unex formed Romney to undertake "dealing" operations which Unex itself could not undertake, which included investments in private companies. Prior to 1963, Romney invested primarily in public companies and undertook some underwriting activities.

Bernard Franklin (hereinafter referred to as Franklin)
was on the board of directors of Unex from 1963 through 1968.
Franklin was also on the board of directors of Romney from the time of its incorporation. Franklin was a chartered accountant and senior partner in the firm of Bagshaw & Company, London, England. He was never an officer, employee or director of Technicon, Limited or any of their subsidiaries.

William Robert Carr (hereinafter referred to as Carr),
one of the directors of Limited, was a solicitor with the firm
E. F. Turner & Sons, in London, England. Carr and his firm
represented Technicon and Limited in their activities in the
United Kingdom from the time of their incorporation. The
Turner firm also represented Unex, when it had occasions to
employ solicitors. Carr approached the board of directors of
Limited with the idea that an Overseas Trade Corporation

(hereinafter referred to as OTC) be created under the laws

of the United Kingdom in order to gain exemption from United

Kingdom income and profits tax on all trading income from outside of the United Kingdom. The board of directors directed

Carr to investigate the concept and work out a "scheme" to

implement it.

After the plans for establishing an OTC were formulated,
Carr became concerned that a company wholly owned by Whitehead
and Weiskopf would be open to a "surtax direction" which Carr
described as a tax similar to an accumulated earnings tax under
United States tax provisions which, in his opinion, would have
partially negated the tax benefits of an OTC. He therefore
suggested to Whitehead and Weiskopf that they have eleven equal
shareholders in the OTC, which he testified was "greeted with
horror." Carr then suggested that 51 percent of the vote of
the proposed OTC be given to a publicly owned company in England.
This suggestion was also unacceptable to Whitehead and Weiskopf.
An arrangement whereby 50 percent "of the votes" would go to
a public British company was accepted by Weiskopf and Whitehead.

Carr then approached several people with the proposition for investment in a proposed OTC. One of the people approached was Franklin, as a representative of Romney. An initial dividend rate of approximately 8 or 9 percent was offered to Romney by

Carr for an investment in the proposed OTC; however, a final dividend rate of 12 1/2 percent was agreed upon by tranklin and Carr. The dividend to be paid on Romney's investment in the proposed OTC was substantially higher than the rate of return on government stocks and approximately 5 percent higher than the then prevailing bank interest rates.

On November 22, 1963, Intapco, Inc. (hereinafter referred to as Intapco) was incorporated under the laws of the State of New York. Intapco was formed for the holding of stock in Ininco, Limited (hereinafter referred to as Ininco), the proposed OTC. Intapco earned no income and did not file Federal corporate income tax returns, although it did file New York State franchise tax returns. Intapco had two classes of stock authorized consisting of 100 shares of common and 500 shares of preferred stock. Upon incorporation Whitehead subscribed to 70 shares of common stock, for which he paid \$7,000. Weiskopf subscribed to 490 shares of preferred stock, for which he paid \$49,000. Par value of both preferred and common stock was \$100 per share.

On November 24, 1963, Intapco and Weiskopf entered into an agreement which granted Weiskopf the option, only during his lifetime, to convert up to 70 shares of his preferred stock into common stock, share for share. The conditions which

entitled Weiskopf to the exercise of the option were essentially as follows:

- (a) If Intapco terminated, in any manner, its entire stock interest in any other company affiliated with Technicon, or any of its domestic or foreign affiliates. The word affiliate was to be given the broadest possible meaning so as to include any company which handled any "Technicon" products, whether or not such companies were connected through stock ownership;
- (b) If neither Intapco nor any subsidiary had done business with Technicon or any affiliate during the 4 months preceding the exercise of the option;
- (c) If Intapco authorized any distribution in respect of its common stock of any stock interest held by it in any affiliate of Technicon; or
- (d) If the holders of not less than 50% of the common stock of Intapco agreed to the sale or other disposition of such stock.

Whitehead also signed the agreement, which provided as follows:

Edwin C. Whitehead as the owner of all the common stock of this Corporation, by his signature at the foot hereof, hereby acknowleges his consent to and approval of the authorization and delivery of the within option, and agrees, for himself, his successors and assigns, to take all necessary action, as the holder of the common stock, to implement the terms of this option and further agrees to the taking of such necessary steps by the board of directors and officers of the company, including amendment of the certificate of incorporation to authorize the conversion, if that may be deemed necessary in the opinion of counsel for this Corporation, and to increase the authorized shares of common stock to such number as would be sufficient to satisfy the conversion privileges under this option.

On November 28, 1963, Ininco was incorporated under the laws of the United Kingdom. It qualified as an OTC under United Kingdom law and as such was exempt from United Kingdom income and profit tax on its trading income from outside the United Kingdom.

The share capital of Ininco was divided into three classes of stock as follows: (1) 250 preferred ordinary shares; (2) 250 deferred ordinary shares; and (3) 175 second preferred ordinary shares. From the inception of Ininco and through February 24, 1966, Romney owned all of the 250 preferred ordinary shares of Ininco, for which it paid 25,000 pounds. Intapco owned all of the 250 deferred ordinary shares and all of the 175 second preferred ordinary shares, for which it paid 2,500 pounds and 17,500 pounds, respectively. As provided in the Articles of Association of Ininco, the preferred ordinary shares and the deferred ordinary shares were entitled to one vote per snare and the majority of each such class of stock was entitled to appoint not more than two directors of Ininco. The second preferred ordinary shares had no voting rights. During all periods relevant to this proceeding the board of directors of Ininco consisted of four directors. During the

The parties have stipulated that the exchange rate during all years relevant to these proceedings was 2.786 dollars to one pound.

period of November 29, 1963 to March 14, 1966, the directors of Ininco were:

Edwin C. Whitehead Edwin C. Weiskopf Bernard Franklin Maurice Goldwater

Each director had the power to appoint another director or another person to act as an alternative director during his absence provided such person was approved by resolution of the board.

The Articles of Association for Ininco also provided that the preferred ordinary shares were to receive a cumulative dividend of 12 1/2 percent per annum and that the second preferred ordinary shares were entitled to a cumulative dividend of 4 percent per annum. The balance of the profits were payable to the second preferred ordinary shares and the deferred ordinary shares, provided that the amounts payable to the second preferred ordinary shares did not exceed 8 1/2 percent annually. In the event of termination of the company the preferred ordinary shareholders were entitled to a preference limited to a return of their investment plus any arrears or deficiency of the fixed cumula ive dividend. Thereafter, the holders of the second preferred ordinary shares were entitled to a preference limited to a return of their investment plus any arrears or deficiency of the fixed cumulative dividend. The balance was to be distributed to the holders of the second preferred ordinary shares

and deferred ordinary shares in proportion to their investments, except that distribution to holders of the second preferred ordinary shares was limited to 12 percent per annum of their investment from the date of issue to the date of payment.

The Articles of Association for Ininco further provided that any share may be transferred to any member of the company provided it is first offered to the other shareholders. The Articles provided that a member desiring to sell his shares must give notice in writing to the company thereby constituting it as an agent for the purposes of the transfer. The directors were then required to notify the other shareholders of the selling shareholders desire to sell. Fair market value was to be fixed by the auditors of the company for purposes of transfer. The actual transfer was subject to the following provisions:

- 31. The instrument of transfer of a share shall be executed by or on behalf of both the transferor and the transferoe, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof. All instruments of transfer, when registered, shall be retained by the Company.
- 32. The Board may, in its absolute discretion and without assigning any reason therefor, decline to register any transfer of any share whether or not it is a fully paid share.

On November 29, 1963, Intapco, Romney, and Ininco entered into an agreement entitled "Shareholders Agreement." Article 3

of that agreement provided, in effect, that if Intapco desired to dispose of its Ininco shares it must first offer the shares for sale to Romney and vice versa. If the shares offered were not purchased by the other shareholder the offering shareholder was free to sell the shares to others or to call for liquidation of Ininco. Under the shareholders' agreement the price to be paid to the selling shareholder for the offered shares was the amount which the shares would receive on liquidation of the corporation, taking into account the corporation's tax liabilities. Under the Articles of Association of Ininco, upon liquidation of that corporation, the owners of the preferred ordinary shares and the second preferred ordinary shares were entitled to receive the par value of those shares plus unpaid dividends, if any. The balance, if any, was distributable to the deferred ordinary shares.

The agreement also provided that, in view of the even division of control of Ininco between the holders of the preferred ordinary and the deferred ordinary shares, the parties in their capacity as shareholders and directors would endeavor to prevent a deadlock that would impede the normal conduct of the business of the company and would exercise all due diligence to resolve any such impasses expeditiously. The agreement also provided as follows:

(a) None of the parties hereto shall, after 10. a dissolution of the O.T.C. or a sale of its shares therein, have any rights solely by reason of having been a shareholder of the O.T.C. with respect to the name of the Company, or its customers' or other goodwill, if any, nor to continued handling of products of manufacturers with whom the O.T.C. may do business from time to time; (b) It is the intention of the parties that: -- (i) no rights shall accrue to any of them in the O.T.C. or its successors by reason of such party being a shareholder, in the O.T.C. to interfere in any way with the freedom of any of the other parties who are shareholders of the O.T.C. to engage in any business activity which may be competitive with the O.T.C. during the life of this agreement or thereafter, nor to recover any damages by reason of such business activity, and (iii) they shall not obtain for themselves the right to any commercial opportunities, or the benefits therefrom which could be regarded as belonging to the O.T.C. its shareholders and beneficial owners in the absence of this Agreement; and this Agreement snall be construed liberally to

give effect to this intention. 3

The agreement further provided that any question arising as to interpretation of the agreement or as to any rights, duties or liabilities of any parties was to be settled by arbitration.

Ininco became engaged in the business of selling Auto-Analyzers, manufactured by Limited, to the world market outside of the United States and the United Kingdom. Limited continued to sell AutoAnalyzers it manufactured in the United Kingdom market. Ininco would purchase AutoAnalyzers from

This agreement provision originally contained a subparagraph (ii) which was eliminated by agreement of the parties.

Limited and pay for the products. It in turn would sell the AutoAnalyzers to agents and distributors overseas, some of which were affiliated in some manner with Technicon. It went through an evolutionary period at this time from the use of independent agents and distributors to establishing offices in foreign countries. One of the purposes of establishing Ininco was to take advantage of the United Kingdom tax benefits and thereby build up capital to finance what Whitehead testified was to be a rapidly expanding export business of Technicon. Ininco would provide credit terms for offices which were overseas and affiliated with Technicon for which no interest was apparently paid by the latter. The credit given to the Technicon affiliated offices overseas in effect "gave them a chance to build their business." There was no written agreement between Ininco and Limited relating to the sale o' AutoAnalyzers for any extended period of time beyond the fulfillment of each order.

There was no provision in the Articles of Association of Ininco to break any deadlock vote which might arise. Franklin and Goldwater were appointed to the board of directors of Ininco by Romney. Weiskopf and Whitehead were appointed to the board of directors of Ininco by Intapco. Romney required that all checks in excess of 500 pounds be countersigned by Carr. A board of directors meeting of Ininco held on November 29, 1963, approved this procedure. Evans, the managing director of Limited, was also the secretary of Ininco. He was also, at least in the eyes of Whitehead, the managing director who ran

Ininco for all intents and purposes. The board of directors of Ininco granted powers of attorney as required for conduct of the company's business. The managing director in a British corporation is the equivalent of a president of an American corporation.

The special treatment accorded by the United Kingdom to an OTC was abolished by legislation enacted in 1965 and effective as of April 6, 1966. Carr advised Whitehead and Weiskopf of this new legislation and that as a result Ininco would no longer be exempt from income and profit tax on its current income. Upon such repeal Ininco no longer served the purpose for which originally intended and the decision was made by Weiskopf and Whitehead to terminate its existence. After it was decided to "get rid" of Ininco, Carr discussed the best method of doing so with the company's auditors (and others). It was determined that liquidation of Ininco by Intapco and Romney would result in the imposition of a 40 percent British tax on the liquidation distributions. United Kingdom law, however, permitted a nonresident to receive dividends in gross which would not be subject to such tax. Carr then approached Intapco with the suggestion that, because of favored tax provisions, Intapco stock should be sold to a Hong Kong company. Carr worked out arrangements for sale of Intapco stock (owned by Whitehead and Weiskopf) and Ininco stock (owned by Romney) to Hong Kong Holdings,
Limited (hereinafter referred to as Hong Kong Holdings),
a Hong Kong corporation. Hong Kong Holdings was a subsidiary
of Wheelock Marden & Co., Ltd., a major Hong Kong corporation.

On December 6, 1965, Whitehead, Weiskopf and Intapco entered into an agreement whereby Weiskopf exercised his option to convert 50 of his shares of preferred stock in Intapco into 50 shares of common stock upon execution of the sale agreement to Hong Kong Holdings. The agreement stated that the conversion was to be accomplished as follows:

- 3. Because the presently authorized and unissued common stock of Intapco consists of only 30 shares, the parties have agreed upon the following plan of recapitalization, which has been approved by the directors of Intapco:
 (1) Whitehead shall immediately upon Weiskopf's exercise of such option, gratuitously surrender to Intapco 20 shares of common stock, and (2) Weiskopf shall convert 50 shares of his preferred stock into common stock, which Intapco shall forthwith issue to Weiskopf. It is the intention of the parties that immediately after the foregoing recapitalization, Weiskopf shall own 440 shares of preferred stock, and Weiskopf and Whitehead shall each own 50 shares of common stock, of Intapco.
- 4. To compensate Whitehead for economic loss resulting to him from the foregoing modification of the rights of the parties, Weiskopf shall pay to Whitehead \$1,000 upon his receipt of the common stock of Intapco. This payment shall be treated by the parties as an adjustment of the sale proceeds from the forthcoming sale to Hong Kong Holdings Limited.

5. Weiskopf hereby waives his right to convert in excess of 50 shares of preferred stock pursuant to the aforesaid option.

On or about December 21, 1965, Carr approached Franklin to ask whether Romney was prepared to dispose of or deal its noldings in Ininco, because Intapco and Technicon "weren't going to use Ininco again." Franklin testified that at first he objected to sale of Romney's interest in Ininco, as the investment had been viewed as being of long-term duration. In a letter dated December 22, 1965, Franklin suggested that some premium element be added for Romney in order to get their approval to go along with the prospective sale of its stock in Ininco to a Hong Kong corporation.

On February 21, 1966, Hong Kong Holdings entered into an agreement with Whitehead and Weiskopf whereby each of the latter was to sell all of his stock in Intapco to the former. The terms of the purchase agreement required Hong Kong Holdings to pay the greater of (i) 735,000 pounds or (ii) the excess, less 15,000 pounds, of Ininco's assets over its liabilities, as certified as of the contract closing date by Touche, Ross, Bailey & Smart. The agreement required Whitehead and Weiskopf to "procure" that the preferred ordinary shareholders of Ininco (Romney) would sell their shares to Hong Kong Holdings at prices representing par value. Hong Kong Holdings had the

option to rescind the purchase agreement if it could not prove to the satisfaction of the Commissioners of Inland Revenue (hereinafter referred to as Inland Revenue) "before the date on which the liquidation of Ininco commences" that (i) it was not resident in the United Kingdom; (ii) it was beneficially entitled to any dividends declared in respect of the Ininco shares; (iii) the whole (or an appropriate part) of the undistributed income of Ininco was exempt trading income of Ininco for the purposes of Part IV of the Finance Act of 1957; and (iv) it was entitled to repayment of income tax deducted from any dividends declared by Ininco. The option to rescind expired on February 28, 1966. Hong Kong Holdings applied to Inland Revenue for authorization to have Ininco declare a dividend out of exempt trading income. In this declaration Hong Kong Holdings attested that it was the beneficial owner of and beneficially entitled to the dividends arising from the outstanding shares of Ininco. That application was approved on February 28, 1966, by Inland Revenue, which granted Hong Kong Holdings authority to pay, without a deduction of tax at the net United Kingdom rate, dividends out of exempt trading income.

Minutes of a meeting of the board of Ininco dated March 14, 1966, declared first that Goldwater had been replaced as

director by A. J. Redpath (hereinafter referred to as Redpath). The minutes also listed payments of directors salaries, directors fees and dividends that had been paid or were to be paid. The minutes approved and confirmed those payments already made and those to be made. With regard to the directors of Ininco, the minutes reflect the following payments (in pounds).

	Yea	To be Paid	
Directors Salaries	11/30/64	11/30/65	
Weiskopf Whitehead	7,500 7,500	7,500 7,500	1875 1875
Directors Fees			
Franklin Goldwater	250 250	250 250	71.4.8. 71.4.8.

The minutes also stated that all shareholders agreed that an additional dividend should be paid on the 250 preferred ordinary shares. Minutes of another meeting of the board, also dated March 14, 1966, reflected that the transfer of shares of Ininco by Intapco and Romney were recorded on the books of Ininco. The resignations of Franklin and Redpath were also accepted in these minutes. Minutes of a third meeting of the board dated March 14, 1966, accepted the resignations of Whitehead and Weiskopf and appointed four new directors. It was also resolved that a dividend in the amount of the available exempt trading income (500,000 pounds) be declared for those beneficially entitled holders of the deferred ordinary shares.

Minutes of a meeting of the board of Ininco dated March 21, 1956, contained a resolution to declare an additional dividend of 305,000 pounds in favor of the holders of the deferred ordinary shares. It was also resolved to call a meeting for the purpose of proposing resolutions to place Ininco in voluntary liquidation. The minutes of an extraordinary general meeting dated March 23, 1966, stated that the following resolution was passed unanimously:

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That the Company be wound up voluntarily by means of a Member's voluntary winding-up, and that William John Findlay of 3, London Wall Buildings, London, E.C.2. be and he is hereby appointed Liquidator for the purpose of such winding-up.

After Whitehead and Weiskopf were advised that Ininco would no longer gain the benefits of tax deferral offered by OTC provisions, they considered establishing manufacturing and selling operations outside of England. In June 1965, Griffin, Lynch & Co., a firm of chartered accountants, whose main office was in Dublin, Ireland, applied to the Republic of Ireland, on behalf of Technicon, for a grant which was offered by the Government of Ireland in August 1965. In 1966, AutoAnalyzers were manufactured and sold by Technicon (Ireland) Limited, an Irish corporation wholly owned by Weiskopf and Technicon. The Irish tax laws applicable to Technicon (Ireland) Limited provide for a complete abatement until December 31, 1981, of corporate

income and dividend withholding taxes on profits derived from its sales of Inducts manufactured in the Republic of Ireland but sold elsewhere. Inchnicon (Ireland) took over the markets previously serviced by Ininco. Limited continued to manufacture and sell for the United Kingdom market, on a much smaller scale than when it supplied products to Ininco. After the transfer of the business to Hong Kong Holdings, Ininco did not solicit any new orders of AutoAnalyzers.

Weiskopf and Whitehead received the following amounts from Hong Kong Holdings pursuant to the agreement dated Pebruary 21, 1966:

March	1, 1966	\$	100,000.00
March	15, 1966		500,000.00
March	16, 1966		681,278.02
March	22, 1966		450,000.00
March	22, 1966		150,000.00
March	23, 1966		249,620.13
May 4	, 1966		124,976.18
		\$2	,255,874.33

The total amount received by Whitehead for his stock in Intapco was \$1,100,654.16. The total amount received by Weiskopf for his stock in Intapco was \$1,155,220.17. Whitehead's basis for his investment in Intapco was \$7,000. Weiskopf's basis for his investment in Intapco was \$49,000. Whitehead and Weiskopf each reported gain on the sale of Intapco stock in 1966 as long-term capital gain.

The first taxable year of Intapco began on November 22, 1963 and ended on October 31, 1964, and its succeeding two taxable years ended on October 31, 1965 and February 24, 1966, respectively. The first taxable year of Ininco began on December 1, 1963 and ended on November 30, 1964, and its succeeding taxable year ended on November 30, 1965.

On February 21, 1966, Weiskopf tendered his resignation as a director of Intapco and Whitehead tendered his resignation as president, treasurer, and director of Intapco. At a board of directors meeting of Intapco held on February 21, 1966, those resignations were accepted and pursuant to the agreement with Hong Kong Holdings new directors were elected. At a board of directors meeting held on February 24, 1966, the board approved a motion to liquidate Intapco.

Authority to pay dividends from Ininco to Hong Kong Holdings without deduction of tax at net United Kingdom rates was given to Hong Kong Holdings in February 1966.

Except for the investment in Ininco there was no financial or business relationship between Unex or Romney, on the one hand, and Whitehead and Weiskopf.

At all times relevant to this proceeding, no United States person (as defined in section 957(d)) owned, directly or indirectly under the rules of section 958, 20 percent or more

of any class of stock of Unex, and no shareholder of Intapco owned, directly or indirectly under such rules, any stock of Unex.

If it is determined that Ininco was a controlled foreign corporation within the meaning of section 957 and that Whitehead and Weiskopf are taxable as provided in section 1248 in respect of stock of Ininco, then for the purposes of section 1248:

- (a) The earnings and profits of Ininco (computed in accordance with Treasury Regulations issued under section 1248 of the Code) for its taxable years ended November 30, 1964, and November 30, 1965, were \$801,836.43 and \$941,143.17, respectively. The earnings and profits of Ininco (so computed) for its last taxable year were \$500,078.92 unless the amounts of 500,000 pounds and 305,000 pounds were distributions out of earnings and profits within the meaning of section 1.1248-3 (b) (3), Income Tax. Regs.
- (b) The income, war profits and excess profits taxes paid by Ininco to countries other than the United States for its taxable years ended November 30, 1964 and November 30, 1965, were \$16,138.74 and \$27,306.64, respectively. The income, war profits and excess profits taxes paid by Ininco to countries

other than the United States for its last taxable year were \$20,248.65.

(c) For the purposes of the computation under section 1248(b)(2), Weiskopf and his wife had (without regard to the Intapco transaction) a loss of \$143,877.32 from the sale or exchange of capital assets, and Whitehead and his wife had (without regard to the Intapco transaction) a loss of \$89,250.88 from the sale or exchange of capital assets.

In statutory notices of deficiencies dated January 29, 1969, respondent stated that the sale of Intapco stock represented the sale of an interest in a controlled foreign corporation which results in the receipt of ordinary dividend income. In amendments to answer dated July 7, 1972, respondent further alleged that the sale of Intapco stock was a sale in form only and that the transaction was in substance a liquidation.

The main issue for determination is whether any part of the gain realized by Whitehead and Weiskopf upon the transfer of their interest in Intapco must be treated as a dividend under the provisions of section 1248.

Section 1248 provides generally that, if a United States person sells stock in a foreign corporation and such person owns 10 percent or more of the total combined voting power of classes

SEC. 1248. GAIN FROM CERTAIN SALES OR EXCHANGES OF STOCK IN CERTAIN FOREIGN CORPORATIONS.

(a) General Rule. -- If --

(1) a United States person sells or exchanges stock in a foreign corporation, or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary or his delegate) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation.

of stock entitled to vote when the corporation is a "controlled foreign corporation," the gain recognized should be included in gross income as a dividend to the extent of the earnings and profits of the foreign corporation. Section 1248(e) provides that if a domestic corporation was formed or availed of principally for the holding of stock of a foreign corporation, the sale of the stock of the domestic corporation should be treated as a sale of the stock of the foreign corporation.

Section 957(a) defines the term "controlled foreign corporation" as any foreign corporation of which more than 50 percent

SEC. 1248(e). Sales or Exchanges of Stock in Certain Domestic Corporations.--Under regulations prescribed by the Secretary or his delegate, if--

(1) a United States person sells or exchanges stock of a domestic corporation, or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock, and

(2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

SEC. 957. CONTROLLED FOREIGN CORPORATIONS: UNITED STATES PERSONS.

6.

(a) General Rule. -- For purposes of this subpart, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

of the total combined voting power of all classes of stock entitled to vote is owned by United States shareholders on any day during the taxable year of such foreign corporation.

Since Intapco was formed principally for the holding of stock in Ininco, and since Whitehead and Weiskopf were United States persons who owned 10 percent or more of the total combined voting power of Ininco, the application of section 1248 in this case turns on whether Ininco was a controlled foreign corporation as defined in section 957(a).

Petitioners contend that since 50 percent of the voting rights were held by Romney, a foreign corporation, Ininco is not a controlled foreign corporation within the definition of section 957(a). Respondent contends that Whitehead and Weiskopf, in effect, retained voting control of Ininco by virtue of the overall arrangement under which Romney purchased and retained its stock interest in Ininco.

It is clear that Romney owned, at least on the books, 50 percent of the voting rights in Ininco; therefore, it does not come within the literal definition of controlled foreign corporation. A mere technical compliance with section 957(a), nowever, is not sufficient to exclude petitioners from its application.

Hans p, Kraus, 59 T.C. 681 (1973), affirmed 490 F. 2d 898

(C.A. 2, 1974), and Garlock, Inc., 58 T.C. 423 (1972), affirmed 489 F. 2d 197 (C.A. 2, 1973), certiorari denied 417 U.S. 911 (1974). The 50 percent test of section 957(a) was intended to

exclude from the definition of controlled foreign corporations only those foreign corporations which are not subject to the dominion and control of the United States shareholders.

Garlock, Inc., supra at 433. We must determine whether the substance of the transaction in this case was that which the statute intended, specifically a real and meaningful ownership of at least 50 percent of the voting power in Ininco by non-United States shareholders.

While we recognize the rights of taxpayers to arrange their transactions in a manner intended to minimize tax liabilities, we also note that such transactions must have substance in order to achieve the intended result. See Garlock, Inc., supra at 434 and cases cited therein. After analysis of the evidence in this case, we hold that Whitehead and Weiskopf retained dominion and control of Ininco in spite of Romney's 50 percent voting interest. Ininco was therefore a controlled foreign corporation as defined in section 957(a) and section 1248 is applicable to the transfer of the Intapco stock to Hong Kong Holdings in 1966.

We rely heavily on the opinions of Kraus v. Commissioner, 490 F. 2d 898 (C.A. 2, 1974), and Garlock, Inc. v. Commissioner, 489 F. 2d 197 (C.A. 2, 1973), certiorari denied 417 U.S. 911 (1974), in determining the relevant factors to be considered in deciding this issue.

Section 1.957-1(b)(2), Income Tax Regs., provides in part that "[a]ny arrangement to shift formal voting power away from United States shareholders of a foreign corporation will not be given effect if in reality voting power is retained." Section 1.957-1(b)(2) further provides in part that:

* * * The mere ownership of stock entitled to vote does not by itself mean that the shareholder owning such stock has the voting power of such stock for purposes of section 957. For example, if there is any agreement, whether express or implied, that any shareholder will not vote his stock or will vote it only in a specified manner, or that shareholders owning stock having not more than 50 percent of the total combined voting power will exercise voting power normally possessed by a majority of stockholders, then the nominal ownership of the voting power will be disregarded in determining which shareholders actually hold such voting power, and this determination will be made on the basis of such agreement. Moreover, where United States shareholders own shares of one or more classes of stock of a foreign corporation which has another class of stock outstanding, the voting power ostensibly provided such other class of stock will be deemed owned by any person or persons on whose behalf it is exercised or, if not exercised, will be disregarded if the percentage of voting power of such other class of stock is substantially greater than its proportionate share of the corporate earnings, if the facts indicate that the shareholders of such other class of stock do not exercise their voting rights independently or fail to exercise such voting rights, and if a principal purpose of the arrangement is to avoid the classification of such foreign corporation as a controlled foreign corporation under section 957.

The Second Circuit, in the Garlock case, stated that "[i]t is significant also that the terms of the arrangement worked out were such that the preferred shareholders would have no interest in disturbing the taxpayer's continued control." That factor applies to the present situation. Romney was given an investment interest which was made attractive by paying a dividend rate in excess of the market for money advanced. Also, by virtue of the Articles of Association of Ininco and the shareholders' agreement dated November 29, 1963, Romney had a guite limited stake in the business. The Articles of Association provided that, upon liquidation, Romney was entitled only to a return of the par value of the stock (i.e., Romney's investment in the corporation). The shareholders' agreement entered into by Romney and Intapco provided that, upon sale of its stock, Romney had to offer its stock interest in Ininco to Intapco at a price measured by the amount to be received upon liquidation. Thus, as a practical matter, Romney could expect to receive only a return of its investment whether it attempted to sell its interest or forced a liquidation of Ininco.

petitioners argue that both Romney and Intapco were subject to the requirement that their interest in Ininco be offered first to the remaining shareholders and therefore these provisions could not have been utilized by Whitehead and Weiskopf

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to retain control over Ininco. As a practical matter, provisions of the Articles of Association and the shareholders' agreement dated November 29, 1963, did serve the purpose of ensuring that Romney had no real interest in disturbing control of Ininco, as it could only obtain a return of its investment no matter which method it followed. If Intapco offered its interest in Ininco to Romney, the latter would have been required to pay Intapco wnatever profits had been accumulated in Ininco. Even if Rommey wished to pay Intapco this amount, any incentive to do so was negated by the fact that the business of Ininco was dependent upon a continued supply of AutoAnalyzers from Limited. Since the owners of Intapco also controlled Limited and thereby could, and eventually did, cut off sale of AutoAnalyzers to Ininco, the rights possessed by Romney lacked any real substance. It is thus clear that Romney had little, if any, interest in disturbing the effective control of Ininco by Whitehead and Weiskopf through Intapco and Limited.

A second factor which indicates that Whitehead and Weiskopf retained control and dominion over Ininco despite Romney's 50 percent voting rights was retention of complete and unfettered control by Limited over Ininco's only product line, the Auto-Analyzer. Since Ininco had no contract with Limited assuring it of any supply beyond current orders, the use of Ininco as

an exporting business could have been halted at any time by a firm over which Whitehead and Weiskopf had control. White-nead testified that he was aware that he could stop supplying the AutoAnalyzers to Ininco and thereby "essentially" terminate its business.

The shareholders' agreement dated November 29, 1963, further strengthened the control which Whitehead and Weiskopf had over Ininco by providing that, after dissolution of or sale of stock in Ininco, the shareholders had no rights with respect to continued handling of its product lines. Since Whitehead and Weiskopf were the sole shareholders of Technicon, whose wholly owned subsidiary was Limited, and thus had control over the manufacture of the AutoAnalyzer, the agreement realistically served only to prevent Romney from any future rights to the use of the AutoAnalyzer should Limited decide to cut off the supply of the products to Ininco. These circumstances further lessened the possibility that Romney would have any interest in disturbing or challenging the control of Whitehead and Weiskopf. Although we find it difficult to believe that a party with 50 percent of the voting power of a corporation would enter into an arrangement in which its only product line could be withdrawn at any time by action of the remaining 50 percent shareholders, we do not foreclose the possibility that

when, however, these circumstances are present in conjunction with other factors indicating that dominion and control are possessed by United States shareholders, the control which whitehead and Weiskopf maintained over the continued supply of the AutoAnalyzer becomes a significant factor.

Petitioners have made much of the fact that Ininco was set up as a "deadlock" company with neither Intapco nor Romney holding the power to control the votes of the board of directors. They also cite the November 29 shareholders' agreement wherein the parties "in view of the even division of control" agreed to endeavor to avoid a deadlock situation and the rights to arbitration in case of differing interpretations of that agreement. This Court and the Second Circuit in the Garlock case viewed the presence of an arbitration provision to be an unrealistic business solution. In any event, any deadlock which occurred in running Ininco could have been solved by Whitehead and Weiskopf by merely terminating Ininco as a seller of the AutoAnalyzers, as it in fact did, when the OTC provisions were repealed.

Furthermore, Romney got 50 percent of the voting shares in Ininco for which it paid 25,000 pounds. In return it got an assured 12 1/2 percent dividend and, by virtue of the Articles

of Association of Ininco and the November 29, 1963 shareholders' agreement, only the right to a return of its investment upon sale or liquidation. It defies credulity that Romney would have advanced more money than Intapco and received only 12 1/2 percent of the dividends to be paid by a company that was to be exempt from United Kingdom taxes on its profits if it truly obtained 50 percent of the voting power of that company.

Any remaining doubt as to the control and domination which Whitehead and Weiskopf retained over Ininco is resolved upon examination of the manner in which Ininco was terminated and the holdings of Romney were eliminated. After it was learned that the OTC provisions were to be repealed, Whitehead and Weiskopf, in discussions with Carr, decided that Ininco would no longer serve any useful purpose and that it should be terminated. Carr, after conference with others, concluded that a sale of stock to a Hong Kong corporation provided the best means taxwise of "getting rid of" Ininco. Carr then approached Hong Kong Holdings to arrange for sale of the stock and eventual liquidation by it of Ininco. In anticipation of this sale, Weiskopf, Whitehead and Intapco entered into an agreement whereby Weiskopf was to exercise his option. This agreement was dated December 6, 1965. On December 22, 1965, Franklin wrote Carr a letter concerning their conversation

"yesterday' regarding the possible sale of Romney's interest in Ininco. Thus, Carr approached Franklin after the transfer of Intapco's interest in Ininco had been arranged. Even Romney's limited rights under the shareholders' agreement were ignored by petitioner. Moreover, Carr testified that he went to Franklin to ask "whether he was prepared to dispose of or deal with his holding of Romney because Intapco of New York weren't going to use or Technicon Instruments weren't going to use Ininco again." Romney had no viable alternative but to sell its interest in Ininco to the buyer which Carr had located. If it refused to do so, the most that it could have done was force a liquidation or offer its stock interest to Intapco and receive a return of its investment. Since Intapco, by unilateral decision, had decided to cut off the supply of Ininco's only product line, it would be unrealistic to argue that Romney had any choice but to assent to sale of its interest in Ininco. Thus, even though Romney possessed 50 percent of the voting rights of Ininco, it lacked any real or meaningful power to influence decisions affecting the future of Ininco or its business.

Petitioners contend that Romney agreed to sell its interest in Ininco only after being promised and receiving a premium over and above the normal dividend rate. This contention apparently is offered to show that Romney acted independently of Intapco and asserted its power as a 50 percent owner of the voting rights in Ininco. We cannot accept petitioners' contention. First, the facts are unclear whether such a premium was paid. Second, the payment of a premium of 900 pounds from a corporation whose net worth had increased from 45,000 pounds upon incorporation to over 800,000 pounds in less than three years does not appear to be sufficient incentive to induce a party to give up its ostensible 50 percent ownership of that corporation. To the contrary, the 900 pounds premium, if paid, appears to be a "nuisance value" payment intended to prevent Romney from forcing liquidation, which could have resulted in the imposition of a 40 percent United Kingdom tax on the earnings to be distributed to Intapco.

A final factor in determining that Whitehead and Weiskopf retained dominion and control over Ininco is an examination of the overall transaction. The primary corporation throughout this period was Technicon. The entire transaction was arranged so that this business, through affiliates, would keep control of the sale of the AutoAnalyzer and expand its worldwide business. Thus, Ininco was utilized to service and expand a worldwide market previously supplied by Technicon. At the same time, funds accumulated in Ininco because of its exempt tax status

were utilized to provide credit for the establishment of foreign offices (Technicon affiliates) which would sell Auto-Analyzers in foreign countries. After repeal of the OTC provisions rendered Ininco of little use to Technicon, White-head and Weiskopf terminated its business by cutting off its supply of AutoAnalyzers and transferring its worldwide manufacturing and selling operation to Ireland.

Romney was powerless to alter the course of these events in any meaningful way even though it had 50 percent of the voting rights of Ininco. It was, by virtue of the Articles of Association and the shareholders' agreement dated November 29, 1963, in a position only to force liquidation of Ininco. Furthermore, the operation of Ininco was run as if it were merely a Technicon or Limited affiliate. Evans acted as virtual managing director of Ininco, as well as director of Limited. Also, the business of Ininco was operated from the offices of Limited. The overall effect of these facts leaves no doubt that Whitehead and Weiskopf retained complete dominion and control over Ininco during its entire period of incorporation.

Having found that Ininco was a controlled foreign corporation, we must consider several contentions made by petitioners concerning respondent's computation of tax under section 1248. Section 1248 provides that the gain recognized on sale or exchange of stock in a controlled foreign corporation is treated

as a dividend to the extent of that corporation's earnings and profits accumulated in taxable years after 1962 and during the period the United States snareholder held the stock. Section 1.1248-1(a), Income Tax Regs. The first computation issue concerns determination of Ininco's earnings and profits, which rests upon characterization of the transfer of Intapco's stock to Hong Kong Holdings. Petitioners for both parties contend that the transfer of the Intapco stock to Hong Kong Holdings resulted in a sale which terminated their interest at that time and that Ininco was subsequently liquidated by Hong Kong Holdings. Acceptance of this contention would result in Ininco qualifying as a controlled foreign corporation only until the date of the transfer and the reduction of Ininco's earnings and profits in the amounts of the distributions made to Hong Kong Holdings after such transfer. Section 1.1248-3 (b) (3), Income Tax Regs. Respondent contends that the transfer of Intapco stock and subsequent distribution to Hong Kong Holdings were in substance a liquidation of Ininco by Whitehead and Weiskopf.

Petitioners preliminarily raise a procedural issue. They contend that additional arguments raised by respondent in his amended answer constitute "new matter" within the meaning of Rule 142, Tax Court Rules of Practice and Procedure, and therefore respondent bears the burden of proof with regard to those

arguments. We do not accept petitioners' contention. The notice of deficiency informed petitioners of respondent's position that the provisions of section 1248 apply to the transaction between Hong Kong Holdings, Intapco and Romney. Petitioners then had the burden of proving that section 1243 did not apply or that respondent's determinations of earnings an profits used to apportion their gain was incorrect. This is especially so in light of section 1248(g) which requires generally that the taxpayers were required to establish the amount of earnings and profits of the foreign corporation. This Court has held that a new position taken by respondent is not necessarily a "new matter" especially when it merely clarifies or develops the original determination without being inconsistent or increasing the amount of deficiency. Estate of George W. Jayne, 61 T.C. 744, 748-749 (1974), on appeal (C.A. 7, Sept. 16, 1974); and Rozelle McSpadden, 50 T.C. 478, 492-493 (1968). The arguments raised in respondent's amended answer involve the same code section, are consistent with his original determination, and do not affect the amount of the deficiency. We hold that petitioners retain the burden of proof.

With regard to the characterization of the overall transaction, we find for respondent. Even though a transaction is put in the form of a sale, if it in fact results in an effective liquidation, it will be given such recognition. John D. Gray, 56 T.C. 1032 (1971), on appeal (C.A. 9, Sept. 18, 1974). There is no doubt that the sole reason for the arrangement between Intapco and Hong Kong Holdings was the liquidation of Ininco in a manner that would permit Whitehead and Weiskopf to minimize taxes paid to the United Kingdom. Carr testified that Ininco was no longer to be used by Whitehead and Weiskopf and that consideration turned to the "methods of getting the money out of the company the best possible way and we put a suggestion to Intapco that everbody sell their shares to a company in Hong Kong where there is a new tax provision and then the Hong Kong Company would take out a dividend in gross which would mean all the profits of the company accumulated over the years which would make the company really 40 percent more valuable than it would be if it was dealt with in England. They agreed to that." It is thus clear that the intent was to find a corporation willing to acquire the stock of Intapco and the holdings of Romney in Ininco and then withdraw the earnings from the corporation.

Petitioners argue that Hong Kong Holdings purchased stock in a viable corporation which continued in the business of collecting accounts receivables. We cannot accept petitioners' contention. See E. Keith Owens, 64 T.C. (1975). Ininco, prior to repeal of the OTC provisions, was a very active business engaged in the sale of AutoAnalyzers. After repeal

of the OTC provisions, Ininco's sole product line was withdrawn by Limited. Thus, Hong Kong Holdings was purchasing nothing more than a corporation with accumulated earnings and accounts receivables. Petitioners in substance were selling nothing more than cash encased in a corporate shell.

E. Keith Owens, supra, and John D. Gray, supra at 1068.

Hong Kong Holdings did not acquire, nor is there any evidence that it intended to acquire, a viable business corporation.

This is attested to by the fact that Hong Kong Holdings did not solicit any new orders for AutoAnalyzers.

Petitioners' final contention is that there was no agreement on the part of Hong Kong Holdings to liquidate Ininco.

From a purely technical standpoint this may be correct. It is clear, however, from the agreement between Hong Kong Holdings, Weiskopf and Whitehead that liquidation of Ininco by Hong Kong Holdings was an integral part of the arrangement. The agreement provided that "in the event that the Purchaser [Hong Kong Holdings] shall fail before the date on which the liquidation of Ininco commences to satisfy the Commissioners * * *," then the purchaser shall be entitled to rescind the transaction. This provision indicates not only that the parties fully intended Hong Kong Holdings to liquidate Ininco but that without liquidation of that corporation under favorable United Kingdom tax conditions the arrangement would be

rescinded by Hong Kong Holdings. It certainly was the overall intent of the parties to use the accumulated earnings of
Ininco (untouched by United Kingdom tax) to pay Whitehead and
Weiskopf for their stock interests in Intapco. Hong Kong
Holdings could have chosen to keep Ininco wive but it would
have only possessed a corporate shell devoid of the business
which it transacted prior to the agreement.

Section 1248 was enacted to provide "the imposition of the full United States tax when income earned abroad is repatriated." S. Rept. No. 1881, 87th Cong., 2d Sess., p. 1 (1962), 1962-3 C.B. 707, 813. To allow taxpayers to avoid imposition of the full tax on a good portion of the accumulated earnings of a controlled foreign corporation by an arrangement whereby the earnings are paid to a third party after a "sale" would be in complete derogation of section 1248 and its legislative history. We hold for respondent on this issue. We find that the sale of Intapco stock was in substance a liquidation of Ininco at that time, with the remaining distributions made to Hong Kong Holdings being liquidating distributions. See John D. Gray, supra.

Whitehead concedes that, once it is determined that a liquidation of Ininco resulted rather than sale, its computation questions become moot. Weiskopf, however, raises several more computational questions.

Counsel for Weiskopf contend that respondent erred in attributing one-half of the earnings and profits of Ininco to Weiskopf. They contend that for years 1964 and 1965 Weiskopf owned preferred stock and therefore only the earnings and profits representing the fixed dividends that would have been received by him if all earnings and profits had been distributed are attributable to him. With regard to taxable year 1966, Weiskopf contends that he owned the common stock for one day during that year, and therefore under section 1.1248-3, Income Tax Regs., the earnings and profits accumulated during that year must be allocated between the shareholders (Whitehead and Weiskopf) according to the number of days that the stock was held during that year. Respondent contends that Weiskopf is considered to be the owner of 50 percent of the common stock from the inception of Ininco and therefore 50 percent of the accumulated earnings and profits should be attributed to him.

Section 1.1248-1(a)(1), Income Tax Regs., generally provides that if a United States person recognizes gain on a sale or exchange of stock in a foreign corporation, that gain shall be included in the gross income of such person as a dividend to the extent of the earnings and profits of such corporation attributable to such stock which were accumulated in taxable

years beginning after December 31, 1962 "during the period or periods such stock was held (or was considered as held by reason of the application of section 1223) by such person while such corporation was a controlled foreign corporation."

Respondent argues that the holding period for Weiskopf's common stock includes the period during which he held the preferred stock under section 1223. Petitioner apparently does not contest the applicability of section 1223 to the common stock obtained by Weiskopf. 8 In this connection we note that

SEC. 1223. HOLDING PERIOD OF PROPERTY. For purposes of this subtitle--

(A) an involuntary conversion described in section 1033 shall be considered an exchange of the property converted for the property acquired, and

(B) a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange.

⁽¹⁾ In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, the property exchanged at the time of such exchange was a capital asset as defined in section 1221 or property described in section 1231. For purposes of this paragraph—

We make no finding with regard to the issue whether the exchange of preferred for common stock by Weiskopf resulted in a transaction to which section 1223 applies.

the parties have stipulated that Weiskopf's basis for his investment in Intapco at the time of the transaction with word Kong Holdings (at which time he owned common and preferred stock) was \$49,000, the same amount which he paid for acquisition of preferred stock in 1963. Petitioner merely argues that the Commissioner has misapplied section 1223 to the present case.

Section 1.1248-1(a), Income Tax Regs., which petitioner coes not attack, clearly provides that a shareholder is considered to have held his stock during the entire period to which section 1223 applies. In this case Weiskopf is considered to own the common stock from the inception of Ininco. We therefore hold for respondent on this issue.

Petitioners' final contention is that the limitation on tax applicable to individuals was incorrectly determined by respondent. They contend the taxable income should be determined by reducing earnings and profits by the amount of distributions made to Romney. Section 1.1248-4(d)(8), Income tax Regs. Ininco clearly paid dividends to Romney. These regulations are applicable in this case. Respondent's determination should be adjusted accordingly.

Decisions will be entered under Rule 155.

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UNITED STATES TAX COURT

Estate of EDWIN C. WEISKOPF, Deceased,
ANNE K. WEISKOPF and SOLOMON LITT,
Executors, and ANNE K. WEISKOPF,
Surviving Wife,

Petitioners,

v.

Docket No. 1920-69

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the opinion of the Court filed April 17, 1975, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1966 in the amount of \$411,372.69.

(signatularran) - wiles

Judge.

JUL 1 7 1975

Entered:

7

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

/s/ James B. Lewis

JAMES B. LEWIS,

Counsel for Petitioners,

345 Park Avenue,

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MEADE WHITAKER, Chief Counsel, Internal Revenue Service. (Sgd) GERALD BACKER-EHH

By:

GERALD BACKER,

Assistant Regional Counsel,
26 Federal Plaza (12th F1.),
New York, New York 10007,
Tel. No. 212-264-8134.

UNITED STATES TAX COURT

EDWIN C. WHITEHEAD and

JOSEPHINE WHITEHEAD,

Petitioners,

V.

Docket No. 1934-69

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the opinion of the Court filed April 17, 1975, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1966 in the amount of \$397,396.56.

(signal) Parrell I. #iles

Judge.

JUL 17 1975

Entered:

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

/s/ Lawrence Goldfein
LAURENCE GOLDFEIN,
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MEADE WHITAKER, Chief Counsel, Internal Revenue Service.

By: (Sgd) GERALD BACKER-EHH

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Estate of EDWIN C. WEISKOPF, Deceased, ANNE K. WEISKOPF and SOLOMON LITT, Executors, and ANNE K. WEISKOPF, 281 A Surviving Wife, Petitioners, Docket No. 1920-69 v. COMMISSIONER OF INTERNAL REVENUE, Respondent. EDWIN C. WHITEHEAD and JOSEPHINE WHITEHEAD, Petitioners, Docket No. 1934-69 COMMISSIONER OF INTERNAL REVENUE, Respondent. NOTICE OF APPEAL Notice is hereby given that the Petitioners hereby appeal to the United States Court of Appeals for the Second Circuit from the decision of this court entered in the above captioned proceedings on the 17th day of July, 1975. /s/ Laurence Goldfein LAURENCE GOLDFEIN Attorney for Petitioners Edwin C. and Josephine Whitehead c/o Roberts & Holland 1301 Avenue of the Americas New York, New York 10019 /s/ James B. Lewis JAMES B. LEWIS Attorney for Petitioners Estate of Edwin C. Weiskopf, Deceased, Anne K. Weiskopf and Solomon Litt, Executors and Anne K. Weiskopf, Surviving

Dated: October 3, 1975

c/o Paul, Weiss, Rifkind, Wharton & Garrison 345 Park Avenue New York, New York 10036

Wife

ESTATE OF EDWIN C. WEISKOPF,
Deceased, ANNE K. WEISKOPF
and SOLOMON LITT, Executors and
ANNE K. WEISKOPF, Surviving Wife,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

EDWIN C. WHITEHEAD and JOSEPHINE WHITEHEAD,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

No. 75-4227

CERTIFICATE OF SERVICE

It is hereby certified that service of one copy of the Appendix in the above-entitled case has been made on counsel for the Appellee on this 15th day of March, 1976, by mailing a copy thereof in an envelope, with postage prepaid, addressed to Scott P. Crampton, Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D.C. 20530, attention Jeffrey S. Blum, Esq.

Dated: March 15, 1976

Lary S. Wolf